REPORT

OF THE

TRIAL,

IN THE SUPREME COURT AT FORT WILLIAM, IN BENGAL,

OF THE CASE OF

THE QUEEN,

ON THE PROSECUTION OF

JOYGOPAUL CHATTERJEA,

AGAINST

W. N. HEDGER, MUTTY LOLL SEAL,

AND

J. C. MICHAEL,

FOR

CONSPIRACY AND PERJURY.

BY

GEO. TAYLOR, Esq.,

BARRISTER-AT-LAW, OF THE INNER TEMPLE.

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PREFACE.

I HAVE been induced by several considerations, to publish this report of a Criminal Trial, in which I was indicted with three other persons in respectable stations of life, as Conspirators, to cheat the Prosecutor out of his money.

Men in general are not inapt, when they hear that another has been indicted for a heinous offence, and when unacquainted with the circumstances, to come to a hasty conclusion that there must have been some foundation for such a charge. This report, which has been made as full and accurate as it was possible to make it in this country, and which has been carefully revised, will give every man, who chooses to form an opinion on the subject, an opportunity of being fully acquainted with the whole case, and I and my friends and advisers will prove extremely mistaken, if this narrative does not carry to every impartial mind the fullest conviction of the perfect innocence of all the defendants, and of the guilt of the Prosecutor himself.

That Prosecutor was twice indicted by me for Perjury, and twice acquitted; on the first occasion when he gave his testimony in denial of the genuineness of the mooktearnamah, (so often mentioned in the course of this report,) the Court, through its Chief Justice, expressed some doubt whether it was not fit that he should be at once committed for Perjury from the Bench, but on a full consideration of the inconveniences attending that course, where, as here, one of the same Judges must necessarily preside at the Trial, the Court came to a conclusion that it was better to leave to the parties aggrieved the vindication of public justice.

In consequence, he was twice arraigned and tried for

Perjury at my charge, and on my prosecution, at a heavy and useless cost ; the results I have already stated. The circumstances attending these Trials were most peculiar. Previous to both of them, and during their course, the Local Press took a most active part in favor of the defendant, and when the second Indictment was prepared, the Grand Jury was openly exhorted to throw out the Bill, and the Special Jury to acquit. These exhortations had their full effect, and the event has shewn, that in Calcutta, small as its community really is, such influences may be often too powerful to admit of the administration of justice through the medium of Juries, however carefully composed, and apparently impartially chosen, especially where an individual member of its Society happens to be obnoxious to commercial rivalry or jealousy, or the object of personal animosity.

I did my utmost to check the publication of articles in the Newspapers, tending to prejudice the case while under judicial investigation, but in vain, and an application made by me for a criminal information was refused by the Court, which then expressed an opinion through the Chief Justice, (completely contradicted by the event,) that such publications were really of little consequence and practically harmless.

As it cannot be my opinion, after such experience, that an acquittal is a decisive test of innocence in criminal cases, I am desirous by giving the utmost publicity in my power to the charges against me, and the evidence by which they were supported and rebutted, to afford to my friends and constituents, especially those at a distance, and the public at large, a full opportunity of forming their own judgment on the merits of a series of trials that at the time excited a very deep interest in the public mind, and are yet well remembered.

MUTTY LOLL SEAL.

INDEX.

SUPREME COURT,

CROWN SIDE.

August 23rd, 24th, 25th, 26th, and 27th, 1852.

[BEFORE SIR LAWRENCE PEEL, C. J., AND SIR J. W. COLVILLE.]

THE QUEEN *on the prosecution of* JOYGOPAUL CHATTERJEA *against* WILLIAM NELSON HEDGER, MUTTY LOLL SEAL, *and* JOHANNES CATCHICK MICHAEL.

THE DEFENDANTS were indicted for a conspiracy to cheat the prosecutor out of his monies.

The indictment was of excessive length, and contained several counts.

The first count in substance recited, that the prosecutor had (with his brothers) an interest in a certain talook called Lot Porunbatty, situate at Shahabad, in the district of East Burdwan, in Bengal. That the defendant Mutty Loll Seal was assignee of a mortgage of three-fifths of the estate, and had instituted a suit for foreclosure, and, during the pendency of that suit, the estate was put up for sale by the Collector of the district for non-payment of arrears of Government revenue (amounting to Rs. 1,177-10-3) and realized Rs. 38,100, leaving a balance of Rs. 36,222-5-9 in the hands of the Collector, to the credit, and in the name of, the prosecutor, who was the registered proprietor.

That, subsequently, Mutty Loll Seal had obtained an injunction restraining the prosecutor from drawing out the surplus proceeds: and that he had also instituted a suit in the Court of East Burdwan with the same object, and had attached the money.

The principal overt acts of conspiracy alleged, were, that during the pendency of these proceedings, the defendants (together with one Ramapersaud Roy and Hurrochunder Sircar),* in order to cheat the prosecutor out of this money

* These persons were included in the indictment, but the Grand Jury ignored the Bill as regarded them.

in the hands of the Collector, forged a false and fraudulent mookteearnamah (or Power of Attorney) in the Bengali language and character, purporting to be signed by the prosecutor : that they also forged a razeenamah (or instrument of settlement) in the suit instituted by Mutty Loll Seal in the Mofussil : that they also forged a safeenamah (or instrument of release and acquittal,) and caused one Surroopchunder Hazra to file the same in the Mofussil Court, on the part of Joygopaul Chatterjea, and as his attorney. That they made fraudulent use of these instruments (stating the mode in detail,) and that thereby the suits were fraudulently compromised; and, lastly, that Mutty Loll Seal afterwards instituted a suit in the Supreme Court, to compel specific performance of the mookteearnamah, and in an affidavit sworn therein, committed perjury.

The second count charged generally a conspiracy to cheat.

In the third count, a conspiracy falsely to accuse the prosecutor with having committed wilful perjury, was charged, the overt act alleged being the preferring a bill of indictment for that offence and subsequent prosecution.

The last was a similar count, charging a second similar offence.

The following is a list of the names of the gentlemen who sat on the Special Jury impannelled on this occasion :—

JAS. J. MACKENZIE,—*(Foreman.)*

F. O'SHAUGNESSY,	J. W. TURNBULL,
J. B BISS,	J. BECKWITH,
W. LACKERSTEEN,	J. W. ROBERTS,
W. HAWORTH,	O. P. L. WATSON,
R. R. STROUD,	G. P. ROBINSON.
D. FERGUSSON,	

Mr. Peterson (with him *Mr. Welch* and *Mr. Doyne)* were for the prosecution.

Mr. Dickens, *Mr. Morton*, and *Mr. Taylor* were for the defendant, Mutty Loll Seal.

Mr. Ritchie and *Mr. Bell* for the defendants, Mr. Hedger and Mr. Michael.

Mr. Peterson opened the case for the prosecution nearly as follows :—

GENTLEMEN OF THE JURY,—I have the honor of appearing

before you as Counsel for the prosecution in this most important case. It has already been before the public in various phases, but I am bound to divest your minds of every feeling of sympathy you may have conceived for the prosecutor, or prejudice for the defendants. The tables have now been turned. Those who were the prosecutors before have now become the accused, and he whom they accused, now stands forth as their accuser. It will be for you to judge from the facts which come before you, whether the parties charged are guilty of the offence imputed to them—whether, in fact, the evidence will be such as to satisfy you, as men of the world and of common sense, that you ought to convict upon it.

I have styled this an important case. So important is it, that the unusual course has been taken of two Judges presiding at the trial. Although I differ from the reasons assigned by the learned Chief Justice for this course, I for one sincerely rejoice that both their Lordships are present to assist you in arriving at a correct verdict. I also rejoice at it, because, should there be occasion to move for a new trial, it would be an advantage to make the motion before two Judges who had personally heard the evidence, rather than before two Judges, only one of whom had heard the evidence and merely communicated it to the other from his notes; for you must be aware, that it is not simply the words, but the manner of a witness which enables one to decide upon his claims to belief. As I said before, I cannot concur with his Lordship the Chief Justice in the reasons he has given for sitting on this trial together with his learned colleague. With due deference, I say they are not such as ought to *go down*. His reasons referred to the consequences which might result to one of the defendants in the event of a conviction. I must tell you, however, gentlemen, that the *consequences* of guilt are nothing whatever to you. The *fact* of guilt is all you have to determine.

(*The Chief Justice* remarked, that if Mr. Peterson intended to represent that he (Sir L. Peel) had intimated that he would sit with Sir James Colvile to prevent the ulterior consequences of a conviction to Mr. Hedger, he was in error. It was the duty of the Court to administer strict and equal justice to all, and the learned Judge who had presided at these Sessions, was fully competent to do that. He (the Chief Justice) had, upon reflection, complied with Sir J. W. Colvile's wish that he should sit with him during the trial, simply in order that, as a verdict of conviction might be followed by the removal

of Mr. Hedger from the rolls, he might see and hear the witnesses *for his own satisfaction.)*

Mr. Peterson.—The Court, I am sure, will give me credit for having no wish wilfully to misrepresent anything. In stating what your Lordship has corrected, I was only stating what I really understood to be your meaning and I am glad you have removed my erroneous impression. To proceed. You must not permit the position of the parties to bias your judgment. In the presence of a British Jury, the Premier Duke of England could hope to receive no more favor or consideration than the meanest peasant in the land; and I will not wrong you by supposing that you will allow any undue and mistimed respect for wealth and rank to overcome your sense of the demands of public justice.

I desire not, as I said before, to ask your sympathies, or raise your prejudices; but I am at liberty to state facts. The prosecutor in this case was tried upon an indictment for perjury in December last, the perjury charged being a denial upon oath that he had executed a certain instrument called a *mookteearnamah*, which will be produced before you. He was acquitted on that trial, but in the month of April of this year he was again put upon his trial for some subsequent repudiation of the same instrument. He was not, indeed, indicted on both occasions for the same denial, for the law of England would not admit of such a proceeding, which would be in direct violation of its very letter; but he was indicted for repeating his denial, which was a violation of the spirit, if not the letter of the law ; and you are aware of the result. On the first occasion he was found *not guilty* after a three days' trial, and long deliberation among the Jury : on the second occasion, when he was judged by a Special Jury, he was likewise acquitted after the case for the prosecution had closed, and without hearing the evidence for the defence, which had, however, been tendered.

The same case now comes before you in the form of an indictment wherein the then defendant is prosecutor, and the then prosecutor and his witnesses are defendants. The indictment contains four counts. The first count charges the defendants with conspiring together to defraud the prosecutor of his money, and fully sets out the overt acts. The second count charges the defendants, generally, with conspiracy to defraud the prosecutor, and omits the overt acts. The third count is founded on the prosecution in December last, and alleges a conspiracy amongst the defendants falsely and maliciously to

charge the prosecutor with perjury. The fourth count accuses the defendants of conspiring falsely and maliciously to charge the prosecutor with perjury in the indictment tried in April.

Much has been said with regard to this trial, and much also with regard to the mookteearnamah. I cannot say that on this occasion you have directly to try the validity of this mookteearnamah, for if you had, you would be trying—not a charge of conspiracy, which is a misdemeanor, but a charge of forgery, which involves a felony, and consequently a forfeiture of goods and chattels and property, should a conviction take place. Nor have you to try whether the defendants have been guilty of wilful and corrupt perjury in reference to this mookteearnamah, not once, not twice, nor thrice, but four times. You have simply to try whether the defendants are guilty—first, of conspiring to defraud the prosecutor of his money, and, secondly, of a further conspiracy, falsely and maliciously to cause him to be indicted for wilful and corrupt perjury on two successive occasions. We have indicted them for the minor offence of conspiracy. You will have, however, indirectly to determine on the validity of the mookteearnamah, and I shall therefore call to your attention how it is that the instrument comes indirectly into this enquiry.

I am happy to see the defendants so well represented by Counsel. All the talent and ability which wealth could command, is arrayed on their side. Had I consulted my own tastes, I should have preferred to see the prosecution in abler and more experienced hands, feeling as I do my own inadequacy to the task ; but as the work has fallen to me, I must address myself to it in a straightforward manner, " nothing extenuating nor setting down aught in malice."

When their turn comes, I presume my learned friends will place a great deal of stress on the respectability of the accused, and will press you with the argument that it is extremely improbable—nay absolutely impossible—that three such men as Baboo Mutty Loll Seal, the millionaire,—Mr. William Nelson Hedger, the respectable solicitor,—and Mr. Johannes Catchick Michael, his confidential clerk, should, for so trifling a consideration, involve themselves in transactions which, if detected, would expose them to public infamy and disgrace. The probabilities are not all on one side. In my turn, I will point out and show you whether they are not much stronger in favor of the prosecution than any probabilities arising from the rank of the accused or their assumed respectability in favor of the defence. Let us set rank and apparent respectability aside ; for in the eye of the law, every man, whatever

his station and rank, is alike—the greatest Baboo, rolling in wealth and clothed in fine linen, being regarded by it with no more favor than the humblest coolee with his eight-annas rag around his waist. I make these observations in order that you may keep steadily before you the real question you have to try, and not allow yourselves to be carried away from it by suggestions as to people of position not being likely to commit offences of this description. It may be remarked upon the evidence of the prosecutor that it is only oath against oath, and that the mouths of the defendants have been shut by the circumstance of their being put upon their trial. But I trust, independently of the prosecutor's evidence, to show you that, as men of the world and of common sense, you can come to no other conclusion than that the mookteearnamah was not executed by him or his authority. As to the improbability of the Big Baboo and millionaire stooping to such means to secure possession of so small a sum—we have seen crime committed before without a motive. As to the probability of one in Mr. Hedger's position taking more than was his due—we have seen men in the highest position fall. I do not mean by this to say that because others have fallen, these men must also have fallen. All I would show you is, that it is not impossible they should have done so, and that the mere circumstance of their position should not prevent you from drawing your conclusions from the facts which may be elicited in the evidence. I seek not to raise your prejudices, nor yet to enlist your sympathies. But I have heard, or rather read, that the learned Chief Justice, in reference to this very case, laid down the dictum, on a former occasion, that men in the position of the defendants did not commit crime without a motive. I feel thoroughly convinced that if his Lordship had heard all the evidence which will now be submitted before you, he would not have permitted such an expression of opinion to escape him. I regret that I am compelled to make these comments. I would willingly avoid collision with the Bench; but I have a duty to my client and to public justice to perform, and I feel fully convinced that the learned Judges sitting on this trial are men of far too honorable minds to conceive a bias against the prosecution because of any comments that I may think myself called upon to make in the course of my address. I have too high an opinion of the intelligence, the love for justice, and the honor of any English Judge to doubt, for one moment, that he would scorn to be influenced by any such consideration, or to allow whatever might have passed on a

former occasion, to prejudice his judgment on a subsequent one. By the law of England, the decision of one Bench may be appealed from to another; but the very constitution of this Court renders it utterly impossible to appeal from one set of Judges to another. This is a disadvantage; but I am happy in the reflection that no unworthy prejudice will interfere with the interests of justice here; and that if the Governor-General himself were on his trial—though, indeed, he could not be tried in this Court—he would receive no more favor at the hands of the impartial and independent Judges before whom I stand, than would the meanest coolee earning his six pice per day. I say all this, because it is extremely probable that the question of probabilities will be mooted, and that you will be pressed as to the improbability of men with the advantages of wealth and position like the defendants, engaging in a conspiracy to destroy a broken-down, ruined, pennyless zemindar. But probabilities could have been brought forward—aye, and something stronger than bare probabilities—in favor of the prosecution, did the rules of evidence permit me to go into matters not directly bearing on this trial. It does not follow that these quondam enemies, Mutty Loll Seal and Mr. Hedger, when they became friends, had no other small interests to sacrifice on the shrine of their newly-cemented friendship. Your province, however, is to battle, not with probabilities, but with facts, especially when the probabilities suggested are those of extraneous matter, such as quality or respectability. You are here on your oaths to try the simple facts charged in the indictment, and if you are to notice the doctrine of probabilities at all, you can only take it into consideration as to the probability of the truth of the evidence actually before you. I know full well the talents arrayed on the other side, and the fearful odds I have to contend against. I feel that all that forensic ability and ingenuity can suggest, will be brought forward as an answer to the prosecution. They will take sufficient care to protect the interests of their clients: I must not be less regardful of those of mine. As I said before, the question you have to try is simply—first, did the defendants lay their heads together and conspire to defraud this prosecutor of his money?—and secondly, did they conspire falsely and maliciously to prosecute him for perjury, first in December, 1851, and then in April, 1852?

I have brought these points prominently before you, because they are important, and I beg you will retain them in your minds, and follow the evidence.

Let us now proceed to the particulars of this most extraordinary case; and I shall have, I am afraid, to tax your patience most considerably, for the nature of the charge, the complexity of the proceedings, and the intricacy of the acts of the conspirators render a long detail absolutely necessary. It is my wish to bring forward every single transaction that will tend to show the relative position of the two defendants, Mr. Hedger and Mutty Loll Seal, from the time that the unfortunate prosecutor came into their hands. The detail will, as I have said, necessarily be of considerable length, but I am sure you will not be unwilling to devote to it your time, which in this case is the time of the country. My learned friends on the other side can have still less reason to begrudge *their* time, for from such clients they have, doubtless, received a liberal remuneration. The question I would put to you is this; whether it is probable that a Bengali—and a poor Bengali, who would fight to the very last for a single pice, would pay away three times the amount of a mortgage debt to a creditor, and then leave himself without any security whatever against a renewed demand for the performance of the covenants in the mortgage-deed,—and that he should also suffer his attorney to take to himself a sum of money belonging, one-half to his (the client's) son, and the other to a third party? Will any of you, gentlemen, believe that Joygopaul Chatterjea, in payment of a mortgage debt of 6,500 Rupees, subject to an account to be taken before the Master, gave away 21,000 Rupees, and secured nothing but this alleged *mooktearnamah*, to protect him from any future claims by Mutty Loll Seal under the covenants of his mortgage-deed, by which, (notwithstanding the terms of what we say is a spurious instrument,) he would still be bound? Is it probable that a person in his position would, even on the supposition of a compromise made, pay his own debt with the money of others, and receive the balance, not by the regular and proper mode of cash payment, but by the irregular and unbusiness-like mode of taking a personal security in the shape of a promissory note not negotiable, for the balance?

Did you ever hear of such a document for a security? It would be an utter insult to your understandings to suppose that you could ever imagine it to be a valid security. That note found its way into the Bank of Bengal, and by one of the most extraordinary circumstances, it came to be recorded in the Bank books, that this identical note was presented there for discount by Joygopaul Chatterjea and received.

Would you believe that a man would go to the Bank to

negotiate what was not a negotiable instrument? Did you ever hear of such a thing? If the note were not payable to order, would it have appeared on the Bank books at all?

I must explain also how the debt to Mutty Loll Seal arose. I have already told you, that a sum of Six thousand odd hundred Rupees was due to him under a decree in equity, subject, however, to an account before the Master. Mutty Loll Seal obtained the decree in 1847, as the assignee of the mortgage of a certain talook called Lot Porunbatty, belonging to Joygopaul Chatterjea and his brothers. Had this been a direct loan from Mutty Loll Seal to Joygopaul Chatterjea, it would have been an ordinary transaction. But I shall show you that this was a mortgage security given by Joygopaul Chatterjea to his brothers, and bought up with avidity by Mutty Loll Seal, merely for the purpose of entangling Joygopaul Chatterjea in the trammels of the law, and getting him in his power, law-suits having then commenced, in which the unfortunate man was the plaintiff, and the Big Baboo, a party interested on the opposite side. The learned Counsel for the defence would, probably, say, that the purchase of the mortgage was only a great speculation of the great Mutty Loll Seal, and that you have only to consider what was due to him under the assignment, and say, let that be paid. So say I; but if I can show you the *animus* of the transaction with which he made Joygopaul Chatterjea his debtor—if I can show you that the motive for his taking the assignment was not legitimate trading, but a wish to acquire the means of oppressing and destroying Joygopaul Chatterjea, I shall supply a motive for the concoction of this *mooktearnamah.*

Another point, which I have not the slightest doubt, will be opened against me, is one which I shall notice now, to anticipate any prejudices which may be raised on behalf of the defendants on the strength of it. I do not wish to jump before I come to the stile; but I have not the slightest doubt that a great deal will be said about monster indictments. You will, I have no doubt, be told, as the Grand Jury were told, about the fairness of the shape in which the indictment has been framed. Again, I say, though with every respect, that I differ from the reasons which the learned Judge, who charged the Grand Jury, gave for objecting to this indictment. You may be told that such an indictment is a wide net spread out to catch all fish. But numbers conspire, numbers must be indicted, or you would have monster conspiracies, marked by the number of conspirators engaged in them. In this case, however, two of the fish—Ramapersaud Roy and

Hurrochunder Sircar, whose evidence, in connection with this very matter, has been taken no less than five times—have been let out of the net, and the defendants will have the benefit of their evidence again. As to monster indictments, some excellent rules have been framed by this Court in consonance with the feelings and spirit of the age, giving the accused a fair chance of escape, and, at the same time, affording the plaintiff the opportunity of stating his case within a reasonable compass. But, unfortunately, this rule does not, according to my construction of the law, extend to conspiracies as well as to felonies; and it would never do for a Counsel, merely for the sake of a few additional words, or a few additional skins of parchment, to peril the interests which he makes it his duty to protect. My learned friend Mr. Welch, who drew up the indictment, thought the new rules might not be applicable to indictments for conspiracy, and exercising his discretion, he framed it in extenso in accordance with the usual forms. Afterwards, on a suggestion from the Bench, the indictment was most considerably curtailed, and reduced to what the learned Judge considered a reasonable compass. But as far as the learned Counsel for the defence are concerned, they can have little cause to complain, for curtailed as the indictment now is, it shows that the prosecutor's legal adviser had no desire to entrap the defendants, by laying a general charge of conspiracy, and setting out no overt acts, but that, on the contrary, they were willing to give them, on the face of the indictment, the substance of the charges. It has also been stated as an objection against indictments for conspiracy, that the case comes before the Court without any preliminary investigation at the Police, and that there are, therefore, no depositions by which to test the oral evidence given by the witnesses for the first time at the trial. We set out the particulars of this case at full length in the indictment to obviate that objection; and though now considerably abridged, the counts still show on what we rely. We do not come like a thief in the dark, and surprise the defendants with matter of which they had no previous knowledge, and which they could not, therefore, come prepared with evidence to meet.

I must now allude briefly to the substance of the prosecutor's case, especially, because it is not one which went hurriedly before the Grand Jury, and was hurriedly disposed of by them. They seem to have entered fully into the prosecution—to have weighed most carefully the evidence which went before them, and not, as is too often the case with

Grand Juries, to have treated the whole enquiry as a mere matter of form. You know full well the province of a Grand Jury, and when you consider the length of time taken by those who found the bill on this indictment—namely, two entire days—you will be able to say whether the evidence for the prosecution was not seriously and carefully examined into by them, and whether, though the evidence for the defence was not, for it could not be produced on that occasion, this can be called a futile prosecution. The indictment comes before you, not after having gone through the mere process of being handed in and handed out of the Grand Jury room.

On the point of law thrown out, (if I understand aright the charge addressed to the Grand Jury, and if a correct account of it has come to the public, (I must, with due deference to the Bench, remark, that the principle is untenable that these parties ought not to be indicted for the lesser offence, merely because, in committing the lesser offence, they have been guilty of a greater. What is more common than to indict for conspiracy to defraud underwriters, and lay as an overt act, the boring holes in the bottom of a ship with intent to destroy, which, of itself, is a felony? The very precedent given in Archbold's Criminal Law is a conspiracy, laying a felony in one of the overt acts.

The charge here is a conspiracy, and a conspiracy it is, and will be, in spite of allegations in the overt acts, which, if proved, will show that the object of the conspiracy was attained by felonious means. I contend, therefore, that in charging a misdemeanour when the overt acts imply a felony, there is no defect that vitiates the indictment.

(*Mr. Dickens* and *Mr. Ritchie* here simultaneously interposed by observing, that if the learned Counsel for the prosecution supposed they meant to take technical objections to the indictment, he was mistaken; such was not their intention.

The Chief Justice.—Even if it were raised, the question might have been reserved. The opening statement of Counsel should always be confined to the facts of the case, and the evidence which he has to support them.)

Mr. Peterson.—I must now enter upon a narrative of the particulars of this case. The prosecutor, Joygopaul Chatterjea, is the son of Tarachurn Chatterjea, who was, in his lifetime, possessed of a talook called Lot Porunbatty, in the zillah of East Burdwan. He purchased this talook in 1830, after a fashion adopted too commonly among the natives—viz., *benamee*, in the name of his son, Joygopaul Chatterjea. To

Englishmen, it must be unaccountable why Hindoos should make it generally their choice to buy with their own funds real property in the name of others. The custom is, perhaps, to be traced to the remnant of the despotism which existed under the old Mogul rule, when natives were unwilling to be known as proprietors of land. That, however, is utterly immaterial, as also is the value of the talook in 1830, although it must be taken to be of the value it fetched, when sold for arrears of Government revenue, which was about 1,800 Rupees. This talook was throughout registered in the name of Joygopaul, even in the life-time of Tarachurn. Tarachurn died in the year 1836, leaving five sons, Joygopaul Chatterjea, the prosecutor, Gungadhur, Hurryhur, Dwarkanauth, and Beressur. The talook in question stood in the books of the Collector of Burdwan, in the name of Joygopaul, as registered proprietor. In 1841, Joygopaul, being desirous of purchasing the shares of Gungadhur and Hurryhur, who were each, as heirs of their father, entitled to a fifth share, purchased them, and as he could not pay cash, he, after taking a conveyance of the two purchased shares, mortgaged them and his own one-fifth as a security for the purchase-money. The mortgage-deed, then, comprised these three-fifth shares, and the mortgagee was entitled to only the principal, interest, and costs of the foreclosure; and if he had been in possession of the premises, he was bound to account to the Master for the rents and profits, &c. It appears that about or after the time of this mortgage, Joygopaul Chatterjea came into collision in a Law Court with one Sreenauth Mullick. Sreenauth Mullick died, leaving Mutty Loll Seal his executor. From that moment, the fate of my unfortunate client was sealed. Fighting in Law Courts here is expensive enough; but it is nothing, in this respect, to the fighting of the Law Courts in the Mofussil. All the engines of oppression and persecution were set in motion by Mutty Loll Seal against Joygopaul Chatterjea. In 1845 Mutty Loll Seal, discovering that Joygopaul Chatterjea had mortgaged his interest in Lot Porunbatty to his two brothers, purchased this mortgage. The ink completing the transaction was scarcely dry, when Mutty Loll Seal commenced against his victim an action of ejectment at Common Law, and a suit or foreclosure in equity, to foreclose all his right, title and interest, in three-fifths of Lot Porunbatty. His Lordship will tell you that Mutty Loll Seal had a legal right to do this; but it was a personal hardship on Joygopaul Chatterjea, nevertheless. Joygopaul Chatterjea not having funds to defend the action of ejectment,

allowed judgment to go by default. Mutty Loll Seal thereupon entered into possession of the talook, and from that time received the rents and profits. The foreclosure suit went on: a decree was taken *ex-parte*, and the account was referred to the Registrar, who had to calculate simply what was due to the mortgagee for principal and interest, with costs. The Registrar found Rupees Six thousand odd hundred to be due on the mortgage, and after six or seven months, this decree was made *absolute*, upon which Mutty Loll Seal's property in the talook became unconditional and complete, both in law and equity. All this, however, was effected by *finesse*. Mutty Loll Seal had forgotten to inform the Court that he had been in possession of the premises for nearly a year, and, consequently, of the rents and profits, and that an account of these ought to be taken and deducted from the amount of his claim. This was eventually brought to the notice of the Court, and the decree for foreclosure was thereupon set aside. In the meantime, in April, 1847, the talook was sold for arrears of Government revenue, and the surplus sale proceeds, amounting to about 36,000 Rupees, which remained after payment of those arrears, was lodged in the office of the Collector of East Burdwan. Mutty Loll Seal immediately filed a supplemental bill of foreclosure, and got an injunction out of this Court in May or June, 1847, which he served on the Burdwan Collector.

The whole of the money stood in the Collector's books to the credit of Joygopaul Chatterjea, as the registered proprietor of the talook, but his own three-fifth share was all that was subject to Mutty Loll Seal's mortgage, the other two-fifths being held by him in trust for his brothers Dwarkanauth Chatterjea and Petumber Chatterjea, the son of Joygopaul, who had purchased Beressur's share. About the same time that Mutty Loll Seal took out his injunctions—*i. e.*, on the 13th of June, 1847, he commenced a suit No. 28 in the Principal Sudder Ameen's Court in Burdwan. I particularly call attention to that suit, because it shows—confirmed as it has subsequently been by his own evidence in the witness-box, by his answer to a bill filed against him, and by an affidavit taken in this very suit No. 28—what it was that Mutty Loll Seal meant to obtain possession of, and altogether negatives the further consideration attempted to be set up by Mr. Hedger, but never claimed by Mutty Loll Seal. This suit No. 28, in the Mofussil, was brought on *pari passu* with the supplemental suit in which the injunction was obtained. Now, what could Mutty Loll Seal have recovered in the supplemental

suit? There was in the Collector's hands—not Rupees Six thousand odd hundred only—but Rs. 36,000. Mutty Loll Seal's three-fifths of this (or Rs. 21,000 odd) was attached by the injunction; and on Joygopaul Chatterjea paying up what was due to him for principal, interest, and costs under the mortgage, he would be entitled to have the injunction dissolved, and to take the residue of the money. He would, therefore, be entitled to Rs. 15,000, over and above what Mutty Loll Seal claimed, even if Mutty Loll Seal had not one pice of the rents and profits to account for, which he had enjoyed for nearly a twelve-month. That, however, would not suit Mutty Loll Seal—still less would it suit him to account for the rents and profits. So he brought suit No. 28 in the Mofussil, not stating that he claimed as a mortgagee and was entitled to recover his mortgage money, with interest and costs, but riding the high horse and claiming the specific sum of Rs. 21,000 of the 36,000 Rupees in deposit to the credit of Joygopaul Chatterjea, "*as his share of the surplus proceeds.*" From this Court he could hope to recover no more than was strictly his due. He had been disappointed in getting a decree for Rs. 21,000 here—so he went to Burdwan with a lie ready concocted, and brought this suit No. 28 in the Principal Sudder Ameen's Court there, claiming all "as his share." Supposing the decree of foreclosure set aside, because an account had not been taken, Joygopaul Chatterjea had an interest—far exceeding Mutty Loll Seal's in the surplus proceeds. I will show that Mr. Hedger knew full well that a *bonâ fide* sale had been made of one-fifth of the talook to Petumber Chatterjea, the eldest son of Joygopaul Chatterjea: and I have a letter written by Mr. Hedger's partner, Mr. Smoult, as attorney for Mr. Hedger to Petumber Chatterjea, after the spurious *mookteearnamah* had been found out, calling upon *him* to pay the costs of the conveyance to him of the very share which Mr. Hedger alleges belongs to Beressur Chatterjea. If they set up that this was a benamee conveyance to Petumber Chatterjea, it lay upon them to show that Joygopaul Chatterjea became possessed of four-fifths by purchase. The fallacy of their argument is apparent on the face of it. A sharp man like Mr. Hedger would not instruct his attorney to write a letter of demand for the costs of the conveyance to one who was a mere benamee purchaser, and not really liable for them. Proceedings went on, in which Mr. Hedger had to draw up affidavits in the equity suit. During the pendency of these proceedings, which clearly showed that

only three-fifths of the surplus proceeds were Joygopaul Chatterjea's, and that the remainder was held by him in trust for Dwarkanauth Chatterjea and Petumber Chatterjea, Mr. Hedger wrote four letters to Joygopaul Chatterjea, showing he had a full knowledge of this joint interest, but still urging him to be quick and get out the whole of the money. If this be not sharp practice and knavery, I only hope for the credit of this Court that there is not another attorney upon its rolls who, under such circumstances, would write such a letter of advice to a client. When all the pent-up evils flew out of Pandora's box, we learn that Hope remained behind. Here, after Joygopaul Chatterjea's all was blown up, there remained only these four letters to be brought up in evidence against Mr. Hedger as evidence on this trial. At the date of these letters he wanted the money for Joygopaul Chatterjea and himself: in course of time, however, he wanted it for Mutty Loll Seal and himself. These conspirators fell in and fell out; and however that may have been to their personal disadvantage, it would seem now at length to have turned out ultimately for the good of the prosecution.

We now proceed.—Mutty Loll Seal and Mr. Hedger, who had been fighting, as alleged, tooth and nail, renewed their friendship to adjust the disputes between the millionaire and Joygopaul Chatterjea. Independently of the sale proceeds of Lot Porunbatty in the hands of the Collector, there were certain sums, either in the same officer's, or the Sudder Ameen's Court, also attached. When the 38,000 Rupees and the other sums were paid into the Collectorate, Joygopaul Chatterjea was represented by Surroopchunder Hazra, as his mookteear under a general power of attorney. I shall prove to you that, by the advice of Mr. Hedger, Joygopaul Chatterjea revoked this power on 30th March, 1847. Mr. Hedger suggested that it was very unsafe to leave such an authority in the hands of a man to whom he paid but four or five rupees per month, and who might easily be induced to effect a collusive compromise with his client's adversaries on the strength of his mookteearnamah, and withdraw the whole of the monies in deposit, and spirit it away. In consequence of this suggestion, Joygopaul Chatterjea addressed a petition on the 30th March, 1847, to the Principal Sudder Ameen, revoking Surroopchunder Hazra's general mookteearnamah. In May, 1847, again, he presented a petition to the Principal Sudder Ameen, stating he had no confidence in Surroopchunder Hazra, and informing him that, if that party should present any instrument of compromise on his behalf, he would do so

without authority. The petition will be produced. It is very important, for, subsequently, Surroopchunder Hazra, on the 11th March, 1848, while the petition revoking his authority was still on the file of the Principal Sudder Ameen, produced his old mookteearnamah, and persuaded two pleaders to put in, in the name of Joygopaul Chatterjea, a *safeenamah*, or deed of acquiescence, (to a *razeenamah*,) or deed of compromise, filed by Mutty Loll Seal. The learned Counsel for the defence will doubtless tell you that Joygopaul Chatterjea was in constant correspondence with Surroopchunder Hazra from May, 1847, to February, 1848, although he had revoked the man's power in March, 1847. That may well have been —there was nothing really inconsistent in it. Joygopaul Chatterjea had never quarrelled with Surroopchunder Hazra: he simply desired to remove temptation from the way of a poor man, and, to do this, might have revoked his power of attorney, and yet maintained a general correspondence with him.

In 1847, Mutty Loll Seal obtained an injunction in his suit against Joygopaul Chatterjea, having raked up the proceedings in a suit of "Mohunchunder Burraul against Joygopaul Chatterjea," which had been lying dormant for years. That injunction also tied up the money in the Burdwan Collectorate. Mutty Loll Seal, in that suit, proceeded on an assignment of a claim set up by Mohunchunder Burraul to the talook. It will rest with my learned friends to show how Mutty Loll Seal became beneficially entitled to the interest of Mohunchunder Burraul. On the 24th of June, 1831, or one month after he had bought the talook at the Sheriff's sale, an agreement was entered into between Joygopaul Chatterjea, the ostensible proprietor, and Mohunchunder Burraul, to the effect that Joygopaul Chatterjea should sell the property to Mohunchunder Burraul, for Rs. 9,500; that Mohunchunder Burraul, should pay down Rs. 500 as earnest money, and the balance, when Joygopaul Chatterjea should put him into possession; and that, as Rammohun Banerjea, the party whose right, title, and interest Joygopaul Chatterjea had bought at the Sheriff's sale, refused to give up possession, he should assist Joygopaul Chatterjea with funds to obtain it. My case is, that Joygopaul Chatterjea is not liable under this agreement, because Mohunchunder Burraul never did perform his part of the contract, although he tried to do it. The earnest money, indeed, he did pay down; but he never deposited the Rs. 9,000, balance of the consideration money, and also failed to assist Joygopaul Chatterjea in recovering

possession from Rammohun Banerjea. The presumption is, that Mutty Loll Seal himself did not consider Mohunchunder Burraul's a good claim, especially after his representatives had slept over it for seventeen years. If he did, you would have found it stated in his bill, or his affidavit, or his evidence in the equity proceedings. But in neither of these does he pretend that he thought of Mohunchunder Burraul's claim at all. If Mohunchunder Burraul's interest *had* becomo beneficially vested in Mutty Loll Seal, and Joygopaul Chatterjea was to part with every pice of his tangible property in the world—as, under the *mookteearnamah* set up, he would have to do—nay, not only of his own, but of his brothers' property as well, his attorney would have taken very good care that a formal release under seal should be given to him from the representatives of Mohunchunder Burraul. The representatives of Tarrachurn Chatterjea considered themselves released from the agreement with Mohunchunder Burraul, in consequence of the failure of contract on his part. Mohunchunder Burraul himself filed a bill in equity to enforce performance of his agreement by Joygopaul Chatterjea, but it abated by his death. It was revived by Omnapoornah Dossee, his widow, and executrix, and Brijonauth Dutt, his executor, but was again dismissed, because the plaintiffs failed to file interrogatories. Proceedings were again renewed by them, and an injunction was obtained, which, however, together with the bill, was once more dismissed. If I am over-stating any point, or am inaccurate in my facts, I am open to correction from the opposite Counsel and the Bench, both of whom, I observe, show a wish that this trial should be conducted with fairness and impartiality.

This phase of this extraordinary drama brings me to the close of the year 1847. According to the case for the defence, Mr. Hedger and Mutty Loll Seal, having been engaged in a series of feuds for years, and fought each other like Kilkenny cats, again met in the arms of friendship in the office of Oswald, Seal and Co. This truce eventually terminated in the concoction of the famous *mookteearnamah*, which will be brought before you, and the execution or non-execution of which is the main point in this case.

The history which the defendants give of the instrument, is this.—One Ramapersaud Roy, said to be a mutual friend of Mr. Hedger, Mutty Loll Seal, and Joygopaul Chatterjea, advised the parties to adjust their differences, and come to a compromise. This advice was adopted, and it was agreed

that Joygopaul Chatterjea should execute a mookteear-namah directed to one Kistnochunder Roy, a zemindar in Burdwan, and addressed to the Collector of Burdwan, giving Kistnochunder Roy power to receive the whole of the surplus proceeds of Lot Porunbatty, on the terms that he should pay over three-fifths to Mutty Loll Seal and the remaining two-fifths to Mr. Hedger. The case has been sufficiently before the Court, and its details are familiar to the learned Counsel for the defence. If any copy or draft was made of this *mookteearnamah*, or if its terms were taken from any written instructions—I hope the defendants will produce such draft or instructions at this trial. As yet, nothing of the kind has been brought forward, and the only evidence we have of Joygopaul Chatterjea having agreed to part with everything he was possessed of in the world, is the *mookteearnamah* itself. It is not likely that one instrument of such importance to all the parties concerned—of such vital importance to Joygopaul Chatterjea, should have been framed without a draft or a memorandum of the terms which it was to embody. If any such were made, what has become of it? And what has become of the promissory note for 8,500 given by Mr. Hedger to Joygopaul Chatterjea in February, 1848? You have heard Mr. Hedger's account about that note. You shall now hear Joygopaul Chatterjea's. He says it was a negotiable instrument, and that he endorsed his name upon it for the accommodation of Mr. Hedger, who was pressed for money at the time. Mr. Hedger then handed it over to him to discount for his (Mr. Hedger's) benefit, and I shall show you that a note for Rs. 8,500 was presented by Joygopaul Chatterjea to the Bank of Bengal for discount, in February, 1848, and that it was received and entered in the Bank books as a note offered for discount. I am bound to say that it was not discounted, but that was because, upon reference to an account which Mr. Hedger had with the Bank, it appeared that he already owed Rs. 5,000 for an advance made to him in December, 1847. That the note *was* negotiable, must be evident from the fact of its having been received for discount, and entered in the Bank books: nor have I ever heard of a man giving a non-negotiable note as a consideration for making away with Rs. 14,000.

Negotiations for a compromise, according to the defendants, went on for some considerable time, and on the 12th February, 1848, Ramapersaud Roy produced a mookteearnamah, which Joygopaul Chatterjea executed on the same day, in the presence of one Hurrochunder Sircar—a serving

writer in Mr. Hedger's office—and Ramapersaud Roy, (both of whom have been let out of the net which the prosecutor had spread to catch all the fish.) The mookteearnamah was taken to Mutty Loll Seal, who forwarded it to Burdwan. It came back, however, in a few days, because of some informality or error in the residence of Joygopaul Chatterjea, or the like. I cannot now comment upon Ramapersaud Roy's evidence at the former trials, as he is not a defendant before you, and if I wish to remark upon what he has said before, I must examine him again at this trial. I will examine him, and it will then be for you to say, after comparing his evidence on the same points on different occasions, whether it is of such a character as to induce you, notwithstanding Joygopaul Chatterjea's testimony, to conclude that that mookteearnamah was executed.

This returned mookteearnamah (so the story for the defence goes) was cancelled, and a copy was made from it similar in all respects except the error, which was corrected. This copy was the mookteearnamah in question, and, as alleged, was executed on the 19th February, 1848, in the presence of Mr. Hedger and Mr. Michael. Mr. Michael's name appears on it as that of an attesting witness. He has said that Joygopaul Chatterjea went with him before Major Birch at the Police, and acknowledged his signature to the mookteearnamah. It will be necessary to put in the mookteearnamah itself, that you may see how far the form of attestation on the face of it agrees with this statement, and also that *experts* may be examined upon it, and you yourself may see the signature of Joygopaul Chatterjea on it as compared with his admitted signatures in the Bank of Bengal books and in his answer to one of the bills in equity.

On the 10th of March, 1848, or the month after the present mookteearnamah was executed as alleged, an order was made by the Supreme Court, dismissing the bill of Mutty Loll Seal as against Joygopaul Chatterjea and another, dismissing the bill in Mohunchunder Burraul's suit; and, consequently, the injunctions in both were dissolved. One passage of the mookteearnamah is—"I have petitioned to the above effect"—viz., that Kistnochunder Roy should receive the surplus proceeds of Lot Porunbatty under a power from him and make over three-fifths of the amount to Mutty Loll Seal. Now, if he did present such a petition, it is incumbent on the defence to show it. My instructions, however, are, that no petition was presented in his name until a month afterwards, and that

was a petition (forged, however) asking leave to put in a *safeenamah* to a *razeenamah* filed by Mutty Loll Seal.

On the 10th of March, 1848, the injunctions from this Court attaching the surplus proceeds were dissolved. But it was still necessary to remove the attachment from the Principal Sudder Ameen's Court. On the 10th, or 11th, or 13th of the same month, Joygopaul Chatterjea heard that the bills in Mutty Loll Seal's suit and Mohunchunder Burraul's suit had been dismissed. For some considerable time before, he had been suspicious of Mr. Hedger, in consequence of the renewal of friendship between the latter and Mutty Loll Seal, and had rather kept away from Mr. Hedger's office. When, therefore, he heard of the dismissal of the bills, and, further, that Mr. Hedger had allowed Mutty Loll Seal, the executor of Sreenauth Mullick, who had been in contempt for an answer—to put in an answer, not upon oath, to his bill against Sreenauth Mullick, his doubts about his attorney became confirmed, and he asked the reason for the dismissal of the bills. Mr. Hedger thereupon showed him an order of Court dismissing the bills. Joygopaul Chatterjea's statement is, that he enquired upon what terms the order had been made, whereupon something was said, but nothing whatever about a *mookteearnamah*. My instructions are, and I believe I shall prove, that Mr. Hedger pressed upon him a compromise, on the terms that each party should pay his own costs, and that Joygopaul Chatterjea should forego his account of the rents and profits collected by Mutty Loll Seal during the time he was in possession. That would have been an exceedingly fair arrangement, as the costs in the supplemental suit were an adequate consideration for the rent and profits. I am informed that when Joygopaul Chatterjea called on the 11th and 12th of March, 1848, Mr. Hedger repeated on each occasion to him that the above was to be the arrangement. On the 18th, however, he received a letter from Burdwan, as he was returning home from Mr. Hedger's office, from which he learnt, to his infinite surprise, that a *mookteearnamah* had been filed in the Collector's Court there, authorising Kistnochunder Roy to withdraw the whole surplus proceeds of Lot Porunbatty; that a *razeenamah* by Mutty Loll Seal, and a *safeenamah* from himself, had been filed in the Principal Sudder Ameen's Court;—and wishing to know what all this meant. Joygopaul Chatterjea thereupon placed his case in the hands of another attorney, Mr. Homfray, who, under his instructions, wrote off the same day a letter to the

Collector of Burdwan, begging that the money should be paid to no one but Joygopaul Chatterjea himself. Shortly after this, Joygopaul Chatterjea went personally to Burdwan, not from an "anticipated precognition" of the execution of the mookteearnamah, as Mr. Dickens would have had the Jury at the last trial believe—but, in consequence, as you perceive, of the intelligence conveyed to him from Burdwan. The learned Counsel for the defence would have you believe that Joygopaul Chatterjea's object in going up was, now that he knew the injunctions had been removed, to snatch at the money and laugh at all parties. This is a mere inference, which cannot be supported, for the mookteearnamah had been filed several days prior to his reaching Burdwan. Mr. Hedger, who, it seems, arrived there the same day, says, he found Joygopaul Chatterjea petitioning the Collector for the payment of the money to himself. This, Joygopaul Chatterjea distinctly denies. How could he be such a fool as to imagine he would get the money when he had written through his own attorney, begging that it should be stopped? He also repudiates having entered into any compromise whatever with Mutty Loll Seal, and says his wish was, that the money should be tied up with all the injunctions again, in order that the rights of all parties might be fairly considered and determined. The attachment had been dissolved by an order of the Principal Sudder Ameen, which was filed on the 10th or 11th of March, full six days before Joygopaul Chatterjea went up. You would fancy that, as stated by the defendants, this mookteearnamah was a compromise of *all* suits pending between Mutty Loll Seal and Joygopaul Chatterjea. In reality, however, it was only a compromise of such suits, the settlement of which would let loose the money in the Collector's hands. If Mutty Loll Seal relied on the instrument as a compromise of all suits, why did he afterwards proceed against Joygopaul Chatterjea in Case No. 10 in the Principal Sudder Ameen's Court, and issue an execution? Why did he proceed in Joygopaul Chatterjea's suit against Sreenauth Mullick? And why did Mr. Hedger, in that suit, allow him to file an answer not upon oath? You would imagine that Mr. Hedger—whose bounden duty it certainly was—would have himself executed a document giving a release to Joygopaul Chatterjea of all his costs, and that he would have another executed by Mutty Loll Seal, giving Joygopaul Chatterjea a release of all his claims. Was this done? The very mortgage-deed assigned by Joygopaul Chatterjea's brothers to Mutty Loll Seal, was not made over to Joygopaul Chatterjea,

though he would continue responsible, under its covenants, notwithstanding the compromise. Do not these concomitant circumstances throw a great suspicion on the whole story about the execution of the *mookteearnamah?* Is it not a very suspicious fact that Mr. Hedger should not have secured for Joygopaul Chatterjea, who was surrendering his all to his creditors, a single paper which the least cautious attorney would take for his client to protect him from a renewal of their claims? These circumstances will speak for themselves, and show that there is something rotten in the case of the defendants. Mr. Michael, the attesting witness to the alleged mookteearnamah, has sworn that he went with Joygopaul Chatterjea to the Police, and that he there saw him acknowledge his signature to the mookteearnamah before the Magistrate. This he stated thrice, but on the last occasion (having seen that the attestation on the face of the mookteearnamah was, "*J. C. Michael* personally appeared before me, and on his solemn affirmation declared that he saw Joygopaul Chatterjea execute this mookteearnamah") he attempted to explain away the discrepancy between his evidence and the Magistrate's record, by stating that when he said Joygopaul Chatterjea acknowledged his signature before the Magistrate, he meant that Joygopaul Chatterjea who was standing at his back, nodded his head when he (Michael) attested the signature. Mr. Michael must have had an eye at the back of his head to see that nod. For a mookteearnamah to have effect in the Mofussil, it is necessary that it should be acknowledged by the party signing it, or the attesting witnesses, before a Magistrate of the Calcutta Police or a Magistrate in the Mofussil. A separate form is used for each mode of acknowledgment. If the attesting witnesses attend, the form is that which appears on the face of this mookteearnamah and which I have already read to you. But if the party executing the instrument himself attends, the form is—" A. B. or John Snooks personally appeared before me this day, and acknowledged to have executed this mookteearnamah." If Joygopaul Chatterjea went to the Police with Michael, as the latter alleges, you would have expected that the acknowledgment on the mookteearnamah would be of the latter form. The form which actually appears, however, is the former. This may be said to be an unimportant discrepancy; but is to be remembered that out of trifles often comes the truth.—There is another point which I would bring to your notice. When the mookteearnamah was registered in the Police, an entry was made of it in the Police books. These are not forthcoming;

but you will have the evidence of parties who have made diligent search among them, that they can find no entry whatever of this mookteearnamah in them. If you see a fact wanting, which is usually done in other cases, you must analyse it, and you will find that it becomes important.

The mookteearnamah now found its way to the Burdwan Collector's Court, where it was filed on the 10th March, 1848. The Order of the Principal Sudder Ameen dissolving the attachment was filed a few days after, in the same month. That order distinctly recognised the *mookteearnamah*, which showed, on the face of it, that Joygopaul Chatterjea had, in consideration of a compromise, assigned over the whole of the surplus proceeds of Lot Porunbatty to Mutty Loll Seal and Mr. Hedger. This being so, do you suppose that Joy gopaul Chatterjea would imagine that a careful and business-like man like the Collector would pay away money in his hands otherwise than as directed? You cannot. Then, to what rational object can you ascribe Joygopaul Chatterjea's journey to Burdwan? I say the fact was, that it was never intended that this case should come to this Court. If the money was once got out, witnesses and documents, innumerable, might have been procured to make out that Joygopaul Chatterjea had given the authority for the withdrawal of the money. You know, as well as myself, that there is too much fraud and deceit practised in these Mofussil Courts, and therefore it was that the expedient was adopted of withdrawing the money by means of *this mookteearnamah.*

Mr. Hedger has stated that Joygopaul Chatterjea, on leaving the Collector's cutcherry, after denying the mookteearnamah, followed him to the Dâk bungalow, and there fell on his knees and kissed his feet, begging for pardon, and saying he had been induced to renounce the instrument by the advice of other men. This is simply unworthy of credit. It carries improbability on the face of it, and is untrue. Joygopaul Chatterjea denies it most distinctly. If he had, he would have dragged him before the Collector at once, and made him recant his false denial there. Was that done? No. He will tell you that in the Dâk bungalow he saw Mr. Hedger in conversation with one Bhaugobuttychurn Sircar —Mutty Loll Seal's man of dirty work, and now, or some short time back, a convict under the sentence of this Court— and that, seeing this man, he dared not enter the bungalow. The trial which ended in his conviction, was not the first time that that same Bhaugobuttychurn had stood in an unenviable character in this Court. I will tell you what really

was done, after the interview with the Collector. Joygopaul Chatterjea himself petitioned the Principal Sudder Ameen forthwith, to review his judgment with respect to the *safeenamah* filed in his name, recal his order, and fasten up the money again. The Principal Sudder Ameen put off the inquiry from day to day, for three months, when Joygopaul Chatterjea, as the time for an appeal was passing by, was compelled to petition the Sudder. Had he executed the mookteearnamah, would he have ventured thus far, in the face of Mutty Loll Seal and Mr. Hedger, who could have turned every engine of the law against him—would he have perilled his character and liberty after having parted with his property? The proceeding would be most inconsistent and suicidal.

Joygopaul Chatterjea made enquiries, and ascertained that, on the 11th of March, 1848, the *razeenamah* on behalf of Mutty Loll Seal was filed in the Principal Sudder Ameen's Court, setting up this *mookteearnamah* and compromise, and stating that a *safeenamah* was to be put in thereto by him (Joygopaul Chatterjea.) He also learnt that a *safeenamah* in his name was subsequently filed. I am told the learned Counsel for the defence are going to bring forward a host of letters purporting to be from Joygopaul Chatterjea to Surroopchunder Hazra, who filed the *safeenamah* which he repudiates. I care not. Do you suppose that, if those letters were thought important, they were not produced before, in the Principal Sudder Ameen's Court, when Surroopchunder Hazra's authority to put in the *safeenamah* was called in question? I shall put Joygopaul Chatterjea into the box, and you will hear from him that some of these letters may be his, but that some are not. I shall prove it as a fact that he petitioned the Sudder Court setting aside the attachment in suit No. 28. An order was made by Mr. Dick to enquire into the validity of the *safeenamah*—I am precluded from stating the reasons which led him to make it—and the result was, the *safeenamah* was removed from the file of the Principal Sudder Ameen, and the proceedings in the suit were restored to their original position. I will show you a letter produced by Surroopchunder Hazra, as if written by Joygopaul Chatterjea to him. Joygopaul Chatterjea swears that he is an utter stranger to it. The proceedings in the enquiry relative to the *safeenamah* were, as I have said, referred to the Sudder Court upon appeal, and were set aside by Mr. Dick. You are not bound to take Mr. Dick's reasons for doing this, nor can I state them to you; but at the same time, you must

remember that men of sense do not arrive at a judgment without reasons, and urgent reasons. Although, then, I do not want Mr. Dick's opinions, I want the fact of what he did on the appeal. He directed that the *razeenamah* and *safeenamah* should be rejected, that the pleaders who had filed it should be fined, and that the proceeding in the suit should be gone into *de novo*.

By a local Act, commissions to take evidence in Mofussil suits are directed to one of the Judges of the Small Cause Court. Mr. Hedger and Mr. Michael gave their evidence before Baboo Russomoy Dutt under such a commission in the suit in which the *razeenamah* and *safeenamah* had been filed. Their depositions on this occasion connect them with the *mookteearnamah*, and the mookteearnamah distinctly refers to the *razeenamah* and the *safeenamah*. What particular part they took in each, I cannot say, but the evidence of their connection with all is sufficient, and you cannot but conclude that the *razeenamah* and *safeenamah* were filed in consequence of the *mookteearnamah*.

We now come to another phase in this eventful history, and that is the step taken by Mutty Loll Seal in this Court in furtherance of the *mookteearnamah*. He filed a bill and obtained an injunction against Joygopaul Chatterjea, Gungadhur Chatterjea, Hurryhur Chatterjea, and Beressur Chatterjea. This bill was verified by an affidavit, setting up the mookteearnamah, and praying the Court to enforce a specific performance of its terms. Written interrogatories were directed, and an examination was had before the Master. Mutty Loll Seal, in the affidavit he made on this occasion, clearly identified himself with the mookteearnamah, for he distinctly set it up. Shortly after this, Dwarkanauth Chatterjea, who was entitled to one-fifth share of Lot Porunbatty, filed a bill, repudiating the mookteearnamah, and stating that he had nothing to do with it. The bill was against Mutty Loll Seal, Mr. Hedger, and Joygopaul Chatterjea. In that case, the three Judges who tried it were not satisfied with the evidence of Joygopaul Chatterjea, and though the Chief Justice has since distinctly denied that he directed a prosecution for perjury against him, yet it is certain that Joygopaul Chatterjea was not believed by the Bench, and was subjected to a severe cross-examination. I shall produce his deposition on that occasion, and you shall judge whether or not he confirms it by his *vivâ voce* evidence to-day. On that deposition, he was tried in December last, and acquitted after an investigation which lasted three days. Mr. Hedger

and Mr. Michael were examined as witnesses on that trial, and I shall refer you to their depositions. One of the counts of our indictment charges the defendants with having caused Joygopaul Chatterjea to be falsely and maliciously prosecuted for perjury in his deposition in that suit. He will be examined before you to-day, and it will be for you, after having heard him, to say, whether he was put upon his trial properly or not.

I must hark back to the equity suit filed in this Court by Mutty Loll Seal against Joygopaul Chatterjea and his three brothers. Mr. Michael, in his deposition, again adopted the mookteearnamah, and said Joygopaul Chatterjea acknowledged having signed it before the Magistrate. The learned Judges came to a conclusion upon the evidence before them, and I am bound to state what that was. Their Lordships made a decree by which Joygopaul Chatterjea was deprived of his money. That, however, you have nothing to do with, for, as the Chief Justice has frankly and justly said in the course of my address, judgments arrived at by other tribunals are, by no means, binding upon you, and should in no way influence your judgment. Under the decree given in that suit, Kistnochunder Roy took out the whole Rs. 36,000 from the Burdwan Collectorate, but Joygopaul Chatterjea has, to this day, been unable to trace out where the money has gone to. That it was taken out by Kistnochunder Roy is certain, for we have his receipt to produce, and shall produce it. I understand that Mr. Hedger says he has not received one rupee of the money. That is very possible, for disappointments like these are the upshot of many conspiracies. The question, however, is—not to whom the money has gone, but whether the *mookteearnamah* under which it was taken out, and which the defendants have sworn was genuine, was in reality executed by Joygopaul Chatterjea.

You may think, gentlemen, that I have already trespassed too long upon your time to point out the connection of these defendants with the mookteearnamah. I could go on with the proofs of this connection, but I think I have adduced enough. I shall now proceed to direct your attention to the discrepancies in the several statements of the defendants in regard to this most extraordinary mookteearnamah. In the equity suit of Mutty Loll Seal against Joygopaul Chatterjea and others, Mr. Hedger, when examined before the Master, made an affidavit in which you will find he states that *he* was the medium through which the alleged compromise between Mutty Loll Seal and Joygopaul Chatterjea was effected. And yet,

subsequently, in Dwarkanauth Chatterjea's suit, and in the prosecutions against Joygopaul Chatterjea, he stated that Ramapersaud Roy was the party that intervened.

Now if Ramapersaud Roy, who is a professional man, really prepared this mookteearnamah, and the instrument was genuine, you would expect to find something in the shape of written evidence of it in his possession. Do you believe that a pleader would frame a document of so much importance without a draft, or a copy, or some communication, verifying the terms of the agreement it embodies? I will venture to say that there is not an attorney of this Court who would ever think of drawing up a paper disposing of £3,500 without keeping a copy or memorandum of it. It is always difficult, gentlemen, to prove a conspiracy; but I shall show you circumstances and statements of the defendants themselves, which will irresistibly lead you to the conviction that the *mookteearnamah* in question never was executed by the prosecutor in this case. I shall show you the reason which Mutty Loll Seal assigned on one occasion for the first mookteearnamah having been returned from Burdwan. The reason he then gave was that there was an error in *the date*. Mr. Hedger, however, has stated, that "it was cancelled in consequence, as I now believe, of some mistake or erasure in *the place of residence* of Joygopaul Chatterjea." Was this such a variance as the two would have fallen into if their main story about the mookteearnamah was true? If any of you had sent such a power of attorney to the Mofussil, really intending that it should be acted upon, and it were returned in consequence of an error, you would at once examine and see what the error was, and would not be likely to forget it. If, then, the first mookteearnamah really existed (of which I know nothing), and had to be cancelled, the reason for which it was cancelled must have been prominent in the minds of all who were interested in its preparation and execution, and they would agree in stating what it was. But if you find them vary in their description of it—one saying it was an error in date; another, that it was an error in the place of residence; a third, that there was the alteration of a clause, and so on, there would be that want of unity in their evidence upon a point in which witnesses of truth would not differ, that would justly taint their whole testimony with suspicion. In answer to a question from me, on the first trial of Joygopaul Chatterjea, Mr. Hedger stated that he had returned the cancelled mookteearnamah to my client. My client denies that he ever saw the first mookteearnamah at all, or the

second one before it was shown to him in the Burdwan Collectorate.

My learned friends would have it believed that Joygopaul Chatterjea went to Burdwan in order to draw out the money in the hands of the Collector. If they can show this, I admit the proof would be important for their case, as the inference they wish to draw—viz., that if he did not sign and give the mookteearnamah, he could not know that it was about to be presented—would be supported. But I have shown how he came to hear of the mookteearnamah before it was presented, and you will also see that he denies having petitioned for the money at all. I must observe that no proceedings are held in the Burdwan Court which are not recorded; and the records of the Collector in this matter do not show that Joygopaul Chatterjea did apply for the money.

I feel bound to admit, with respect to Mr. Hedger, that there are not as many discrepancies in his evidence as there are in that of Mr. Michael. The discrepancies in the evidence of Mr. Michael are utterly inconsistent with probability. Mr. Hedger, in his deposition in Mutty Loll Seal's suit of foreclosure, stated the following:—

"I am an attorney of this Court. I was an attorney to Joygopaul Chatterjea in the suit of foreclosure filed by Mutty Loll Seal in 1848. I asked for Joygopaul Chatterjea in that and other suits. This mookteearnamah bears the signature of Joygopaul Chatterjea. It was signed in my presence. There *was another mookteearnamah signed by Joygopaul in my presence*. It was returned from Burdwan to me by Ramapersaud Roy. I returned *it ultimately to Joygopaul Chatterjea;* it was returned in consequence of some formal defect ap pearing on the face of it. I believe the description differed. Mr. Michael, who witnessed this mookteearnamah, was present when it was signed; he took it away under my direction for the purpose of being authenticated in the Police in the ordinary way. I did not go to the Police. The former paper was also authenticated at the Police. Hurrochunder Sircar is a serving writer in my office. At the time Joygopaul gave me the former mookteearnamah, I gave him a writing; it was a promissory note. It was never endorsed by him and returned to me. The proceedings referred to in the *mookteearnamah* are in the Mofussil Court, the particulars of which I am not acquainted with."

The statement in this as to the promissory note is distinctly denied by Joygopaul Chatterjea. He denies that he ever endorsed it and returned it to Mr. Hedger. I have served a

notice upon Mr. Hedger to produce this note, which Joygopaul Chatterjea says he gave back to Mr. Hedger. I will insist on its production, and if it is still withheld, I shall be obliged to give secondary evidence as to it, and that evidence will be a record of what was done in the Bank of Bengal with reference to that note.

The evidence of Mr. Michael also requires consideration. His statement in Dwarkanauth Chatterjea's suit not only fails to support the statements he had made before, but contradicts those which he made subsequently. In Dwarkanauth Chatterjea's suit, his statement was as follows:—"This mookteearnamah was acknowledged in my presence at the Police Office. Joygopaul accompanied me. I know of a promissory note being given by Joygopaul to Mr. Hedger, in execution of the former mookteearnamah. It amounted to 8,000 Rupees. There was only one promissory note that was not payable to order; it was payable one month after date, and was dated the 12th February. Mr. Hedger told Joygopaul that he would not give him this note payable to order, and I was present at the time." As I said before, the promissory note is utterly denied. Mr. Michael is only a clerk backing up the master, and the little facts which you will hear proved by the independent testimony of officials from the Bank of Bengal, is worth more than a bushel of the statements of such a witness.

Mr. Michael says in this same affidavit, that Joygopaul Chatterjea, at the date of the execution of the mookteearnamah, owed Mr. Hedger 10,000 Rupees on taxed bills of costs and for advances and monies paid to account, which included Rs. 1,500 advanced to his son Petumber; and it appears that Joygopaul Chatterjea gave Mr. Hedger a bond and warrant, which enabled him to make a prior claim to a sum due to certain other parties. Now, I cannot commend my client for having given this bond and warrant, and must confess that when he did that, he acted in a foolish moment.

The suit of Dwarkanauth Chatterjea in the Principal Suddur Ameen's Court also is not irrelevant to this case. Surroopchunder Hazra filed a *safeenamah* in that suit on behalf of Joygopaul Chatterjea, and as his authority for doing so, produced a letter in which appears the signature of Dwarkanauth Chatterjea, but which we say is a forgery. But, however that may be, would a careful and honest attorney, knowing that Dwarkanauth Chatterjea had an interest in this talook—knowing that affidavits were filed, in which his interest appeared, and that he was in Calcutta and could be

consulted—would such an attorney, I ask, have taken such an acknowledgment as this mookteearnamah for his personal benefit, unless he had the sanction of Dwarkanauth Chatterjea? It is upon grounds like these, and upon the statements in the equity suit as compared with themselves and with the statements of the same parties on subsequent occasions, that I unhesitatingly declare that my client has been deprived and robbed of his monies. Kistnochunder Roy, as I have said before, has drawn the whole of the surplus proceeds of Lot Porunbatty under a decree of the Supreme Court in equity. If these gentlemen—defendants rather, I should say—had had the least consideration for Joygopaul Chatterjea, they would, after they had indicted him for perjury, and found he was acquitted, have staid their hands, especially as they knew he was in jail, without means, and could not enter an appearance. They still pursued him, however, with unabated rigor. The result is, that his money is gone—that he continues in gaol—that he is made by Mr. Hedger an insolvent against his will—and that (as he is now told by the learned Chief Justice presiding as Commissioner of the Insolvent Court) his imprisonment must be perpetual, unless he files his schedule, these men being his only creditors. Here is proof of oppression if no other were wanting. No evidence that they can bring—not millions of angels—can blot out the stain which attaches to these proceedings—proceedings mainly owing their origin to the ingenuity and elastic conscience of an easy attorney.

I am afraid, gentlemen, you will think I am trying your patience. I pray you to remember, however, that the trial to-day is one, not of patience, but of character and guilt, and in such a case, as I said before, the time of the Jury is the time of the country. Joygopaul Chatterjea was twice indicted for perjury in having denied upon oath this mookteearnamah, and was twice acquitted. His judges on the first occasion were a common jury; the prosecutor, however, was not satisfied with the verdict of twelve honest men from Cossitollah, so they appealed from Cossitollah to Chowringhee, but Chowringhee kicked out their case in a considerably shorter time than Cossitollah had done. I say kicked out, gentlemen, for I am not here to mince words. I shall produce to you the deposition of Joygopaul Chatterjea on which he was indicted, and I leave you to say whether it contains aught on which any, but men of the most unscrupulous consciences and vindictive dispositions would have thought of grounding an accusation of perjury. I shall also put in the

reports in the *Hurkaru* newspaper of the proceedings in the two trials of Joygopaul Chatterjea, and call the Reporter, who furnished them, to prove that they are correct. Altogether, I shall show such a system of persecution and oppression adopted against this unfortunate man as was never known in any other Court of Justice. The first and second results of Joygopaul Chatterjea's trial virtually dispose of this case. It is not impossible that, as he will give his evidence in support of it, he may be prosecuted by his prosecutors for perjury; but so convinced am I that he never executed this mookteearnamah, that I will defend him to the last. On the first trial, the gauntlet thrown down by the then leading Counsel bore this inscription—"Either Joygopaul Chatterjea has committed this perjury, or Mr. W. N. Hedger, Baboo Mutty Loll Seal, Baboo Ramapersaud Roy, and Mr. J. C. Michael are guilty of forgery and perjury." I took up the gauntlet, and you know the result of the contest. On the second trial, Mr. Dickens threw down a gauntlet, with the same inscription; I took that up too, and you know the issue of that contest likewise. Let us see what the ingenuity and ability set in motion by a good brief can do in *this* case.

I undertake to prove the defendants guilty of the conspiracy charged against them; but in saying that, I must also say, that from the very nature of the offence, you cannot expect me to give *direct* evidence of their guilt. If, however, I give you circumstantial evidence such as would satisfy a jury in an indictment for theft or robbery, His Lordship will tell you that that will justify you in finding a verdict of guilty. I have detailed to you the evidence I intend to offer, and I cannot do better than sum up, on the subject of indirect evidence in this case, in the words of Mr. (afterwards Baron) Gurney—than whom there was not, in his time, a keener man in the profession—in the trial of Lord Cochrane and others, (in *Townsend's State Trials,)* for a conspiracy to raise the price of the public funds:—

"Gentlemen, when I undertake to prove them to be guilty, you will not expect that I shall give you proof by *direct evidence*, because, in the nature of things, *direct evidence* is absolutely impossible—they who conspire, do not admit into the chamber in which they form their plan any persons but those who participate in it; and, therefore, except where they are betrayed by accomplices, in no such case can positive and direct evidence be given. If there are any who imagine that positive and direct evidence is absolutely necessary to

conviction, they are much mistaken; it is a mistake, I believe, very common with those who commit offences: they fancy that they are secure, because they are not seen at the moment; but you may prove their guilt as conclusively (perhaps even more satisfactorily) by *circumstantial evidence* as by any *direct evidence* that can possibly be given.

"If direct and positive evidence were requisite to convict persons of crimes, what security should we have for our lives against the *murderer by poison?*—no man sees him mix the deadly draught avowing his purpose. No; he mixes it in secret, and administers it to his unconscious victim as the draught of health; but yet he may be reached by *circumstances*—he may be proved to have bought, or to have made the poison; to have rinsed the bottle at a suspicious moment; to have given false and contradictory accounts, and to have a deep interest in the attainment of the object. What security should we have for our habitations against the *midnight burglar*, who breaks into your house and steals your property without disturbing your rest or that of your family, but whom you reach by proving him, shortly afterwards, in the possession of your plate? What security should we have against the *incendiary* who is never seen in the act by any human eye, but whose guilt, by a combination of circumstances over which he may have had no control, or part of which he may have contrived for his own security, is as clearly established as if deposed to by the testimony of eye-witnesses.

"Gentlemen, by the same sort of evidence by which in these, and various other cases, the lives of individuals are affected, I undertake to bring home this case to the defendants upon this record. I undertake to show that such a conspiracy did exist as this indictment charges; and I undertake to prove every one of these defendants acting in furtherance and execution of the conspiracy, so as to leave no more doubt upon your minds when you have heard the evidence, that they were all parties to this conspiracy, than if you had witnesses before you who were present with them in consultation, and heard them assign to each man the part which he was to act." * * * * *

I take my stand upon these grounds. Besides the documentary evidence, and the witnesses who will speak to the signature of Joygopaul Chatterjea, I have but one material witness, and he is Joygopaul Chatterjea. I shall examine him fully, and prepare the way for his cross-examination by my learned friends, who may do with him what they like. I must only warn you against putting down to the confusion of a

honest witness the *mauvaise honte* of an inexperienced one. I fear not what evidence the learned Counsel for the defendants may bring forward—I am confident of the truth of my client's case, and I am not less confident that sooner or later the truth will come out, and the statements of the prosecutor will prove to be true, and those of the defendants false.

Tuesday, 24th August.

EVIDENCE FOR PROSECUTION.

JOYGOPAUL CHATTERJEA.—I am the prosecutor in this indictment. My father was the purchaser of Lot Porunbatty in East Burdwan. He purchased it in my name many years ago. I cannot say how many years ago. After his death, the talook became the joint property of myself and brothers. My father died somewhere about ten or twelve years ago, perhaps in 1839. He left five sons—Gungadhur Chatterjea (my half-brother), Hurryhur Chatterjea, Nilmoney Chatterjea, Dwarkanauth Chatterjea, and myself, the eldest son. Beressur Chatterjea was the son of Nilmoney. He died after the decease of my father. I bought the shares of my brothers Hurryhur and Gungadhur in the talook. Not having money at the time, I executed a mortgage and bond to them as security for the purchase-money. I mortgaged my own share, and the shares I had bought, in the talook. After Mutty Loll Seal had instituted a suit against me, I learnt he had purchased that mortgage from my brothers. He brought an action of ejectment against me to obtain possession of the talook. He also filed a bill of foreclosure in equity. He recovered possession. The sheriff put him in possession of the shares of my brothers and of my own share under an order of the Court. I heard he took possession of something more, but I don't know of my own knowledge. I collected no rents after he came into possession in respect of the three-fifth shares belonging to me, nor did my agents. Mutty's servants used to turn them out, as I have heard. I believe it was in February, 1846, that Mutty took possession, under a writ of this Court. If my recollection serves me right, the date of the decree in the foreclosure suit was in March, 1847. I remember Case No. 10 of 1847 in the Principal Sudder Ameen's Court of Burdwan. It was a suit instituted against me and others, by Mutty Loll Seal, to recover a sum of money which he had paid for arrears of Government revenue for the talook. He obtained a final decree in that suit. He

took out execution, I believe, in 1848—after February of that year. I had to pay the amount (Rs. 1,000 and odd, including costs) of the decree under a writ which Mutty Loll Seal obtained in the Mofussil, and which was served on me by the sheriff here. In 1847, I believe, I instituted a suit in equity in this Court relating to Lot Porunbatty against Mutty Loll Seal, Joygopaul Roy, and Kistosoondree Dossee, as executors of Sreenauth Mullick. Nothing has been done in that suit yet. It lies dormant. I never authorised my attorney to allow Mutty Loll Seal to put in his answer in that suit without oath. Mr. Hedger was my attorney at that time. I do not know of my own knowledge whether Mutty Loll Seal did put in an answer not on oath; but I have heard from Mr. Hedger that he did. I believe Lot Porunbatty was sold in April, 1847, for arrears of Government revenue. I believe it realised Rs. 38,100. The amount of Government revenue due was about Rs. 1,700 or 1,800. After payment of the arrears of Government revenue, the surplus money (Rs. 36,000 odd) was placed to my credit in the books of the Collector. I was the registered proprietor of the talook. The decree in the foreclosure suit was set aside. Mutty Loll Seal after that, and after the sale of Lot Porunbatty, filed another bill in equity against me. Upon that, an injunction was issued from this Court, under which the money in Burdwan was tied up. I know Case No. 28 of 1847 filed in the Principal Sudder Ameen's Court in Burdwan. Mutty Loll Seal was the plaintiff in that suit. The defendants were myself, Gungadhur Chatterjea, Hurryhur Chatterjea, Beressur Chatterjea, and Dwarkanauth Chatterjea. That suit was to recover the surplus money which stood in the Collector's office. I don't recollect the date of the suit, but it was after the sale of Lot Porunbatty. Mutty Loll Seal had attempted to get the money out, but not having succeeded, he brought this suit. On his petition to the Principal Sudder Ameen, an attachment was granted, also *crooking*, or attaching the money. Sometime in 1847 a suit was instituted against me by Omnapoorna Dossee as representative of one Mohunchunder Burraul in respect of Lot Porunbatty. The plaintiff ultimately obtained an injunction which tied up the money in Burdwan. I look at this mooktearnamah.* I never exe-

* The mooktearnamah in question, (marked, EXHIBIT A.) It was in Bengali: the following is a translation:—

"TO THE HIGH IN DIGNITY SRIJOOT COLLECTOR SAHEB OF ZILLAH BURDWAN.

I, Sri Joygopaul Chattopaddhya, inhabitant of the city of Calcutta, in Coloo-

cuted that instrument, nor any instrument of that kind. The signature to it is not in my hand. It is my name, but not my writing, nor have I been in the habit of signing my name in that way. I believe I have seen this mooktearnamah before. I first saw it at the Collector's office in Burdwan. That was, I believe, in March, 1848. The instrument has been filed in the Collector's office. He (the Collector) showed it to me. I do not remember to have ever spoken to Ramapersaud Roy in the latter part of 1847, or beginning of 1848, about a settlement of the disputes between myself and Mutty Loll Seal. I may have seen him. I believe I did occasionally employ him as my pleader in suits connected, I believe, with my talook. He had also been employed, I believe, as a pleader for Mutty Loll Seal against me. I have heard that he prepared papers for Mutty Loll Seal against me. I

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tollah, at present resident of Bhowanipore, in the zillah of the Twenty-four Pergunnahs, Dhee Punchanun Gram, do execute this mooktearnamah to the following purport, that is to say, that in the zillah of Burdwan, a Hoozooree talook, called by the name of Lot Porunbatty of No.———, and of which Government jummah revenue is Co.'s Rs. 5,450 and ten annas, was written in my name in the Sheristah of the Hoozoor: the said talook was, on the 26th day of April, 1847, put up for sale for arrears of revenue due to the Government on account thereof, and sold for the price or sum of Co.'s Rs. 38,100. Out of the proceeds of such sale, the sum of Co.'s Rs. 1,876-9-3 being paid to the Government for revenue, left a balance or surplus sum of Company's Rupees 36,223-5-9 gundahs now in deposit, in the account of the Hoozoor, in my name and to my credit, for recovery of which sum, Sri Mutty Loll Seal, of Colootollah, in Calcutta, who hath several actions against me, now pending in different Courts, and hath, under orders of such Courts, seized the said surplus amount. Now an amicable settlement of all actions respecting the surplus sum has taken place between me and Baboo Mutty Loll Seal, under the conditions and terms following, that is to say, that a nine annas and twelve gundahs share of the total surplus sum, viz., Co.'s Rs. 21,734 and three pies will be received by Baboo Mutty Loll Seal, and the remaining six annas and eight gundahs share, being Co.'s Rs. 14,489-5-6 gundahs, will be received by me. But the whole surplus sum is deposited in the Treasury of the Sircar of Government in my name, in consequence it cannot be debited by the Government Treasury without any receipt for the same, wherefore to obtain payment of the whole surplus amount, viz., the said sum of Co.'s Rs. 36,223-5-9 under my receipt, I hereby appoint Sri Kistno Chunder Roy, of Chuck Dheeghee, under the Chowkee of Salamob, and in the zillah of Burdwan, to be my mooktear, and that such mooktear will sign for me, and in my name, receipts for obtaining payment of the whole amount of the said surplus money from the Hoozoor, and on his receiving such surplus sum, he will pay to Srijoot Baboo Mutty Loll Seal the sum of Co.'s Rs. 21,734 and three pies out of the same, because the amount is payable, and is the right of Baboo Mutty Loll Seal. I therefore have presented a petition to the above effect and the balance or remaining sum of Co.'s Rs. 14,489-5-6 gundahs, I hereby order my said mooktear to pay the same to Mr. Hedger, and obtain a receipt from him for the same. I do hereby ratify, allow and confirm all and every the actings and doings whatsoever that my said mooktear will do, or cause to be done, in respect of obtaining payment of the said surplus amount, dated 19th February, 1848.

Witness.

J. C. MICHAEL.

ENDORSED—"J. C. Michael appeared before me this day, and acknowledged the signature to this mooktearnamah to be correct—F. W. BIRCH."

have no recollection that I ever authorised him to compromise matters between me and Mutty Loll Seal. I never met Mr. Hedger, Ramapersaud, and Mutty Loll Seal in Mr. Hedger's office on the subject of a compromise of any of these suits. I never met any of these parties on that subject in Mutty Loll Seal's house. Mutty Loll Seal and I were on bad terms, and I did not go to his house. I never, through the intervention of Ramapersaud or Mr. Hedger, came to any agreement that one Kistnochunder Roy should receive the money standing to my credit in Burdwan, and pay three-fifths to Mutty Loll Seal and two-fifths to Mr. Hedger. I never came to an agreement with Mr. Hedger that, out of the two-fifths, he was to take Rs. 8,500 and make over the residue to me. In February, 1848, I owed him money on no account except for costs ; but he had not made out his bill against me. At that time, I suppose, I might have been in his debt about Rs. 4 or 5,000 on a settlement of accounts. In February, 1848, he did not make any claim against me for costs and otherwise to the amount of Rs. 9 or 10,000. He did not agree with me to forego a part of his claim on condition of his receiving two-fifths of the surplus proceeds of Lot Porunbatty. I did not, on or about the 12th of February, entreat him to take only costs out of pocket. I made no agreement with him that he should give me a promissory note for Rs. 8,500 payable in one month, and not negotiable. I made no arrangement to take a promissory note from him for any amount. Why should I? On or about the 12th February, 1848, I executed no mooktearnamah, authorising Kistnochunder Roy to draw out the money standing to my credit in the Burdwan Collectorate. On or about the 12th February, 1848, I executed no mooktearnamah which was witnessed by Hurrochunder Sircar.* On or about the 12th February, 1848, I did not accompany Hurrochunder Sircar to the Police Office to acknowledge any mooktearnamah. Subsequently to the 12th February, 1848, I did not see a mooktearnamah purporting to have been signed by me, and returned from Burdwan. Between the 12th and the 19th February, 1848, I did not run my pen through my own name in any mooktearnamah that was in the hands of Mr. Michael. Between the 14th and 19th February, Mr. Hedger returned to me no mooktearnamah which had been cancelled. On or about the 19th February, I executed no mooktearnamah in favor of Kistnochunder Roy, nor any directed

* The *first* mooktearnamah.

to him, to take the surplus proceeds of Lot Porunbatty. Some fourteen or fifteen days after the 19th February, I had no communication with Ramapersaud Roy, stating that I had sent a mooktearnamah to Burdwan on the 19th. Between the 19th February and 20th March, I made no enquiries of Ramapersaud Roy as to what was being done about the suits in Burdwan relating to Lot Porunbatty. On the 19th February, or on any other day, I did not accompany Mr. Michael to the Police and acknowledge my signature to the mooktearnamah you show me.* I don't recollect whether on or about the 12th February, Mr. Hedger produced to me any memorandum of Mutty Loll Seal's claims against me. Nothing was ever said to me by Mr. Hedger of the costs of an indictment against Mutty Loll Seal. I had then no indictment against Mutty Loll Seal. I had indicted one Brijonauth Dutt, who was a co-plaintiff in the suit of Omnapoorna Dossee, as executor of Mohunchunder Burraul. No claim was ever made against me by Mr. Hedger in respect of the costs of that indictment. I first became aware of the fact that a mooktearnamah, authorising the withdrawal of the surplus proceeds of Lot Porunbatty from the Burdwan Collectorate, had been filed, in March, 1848, I believe, when I received a letter from my mooktear in Burdwan, informing me that such an instrument had been filed in the Collector's office. I believe I received that letter on the 1st or 2nd of Choyt (13th or 14th March, 1848.) The name of that mooktear was Anundchunder Mittre. I took the letter to Mr. Homfray, the attorney, to ask him to take steps to prevent the removal of the money from the Collector's office. Subsequent to the receipt of that letter—perhaps three or four days after—I myself went to Burdwan. On my arrival there, I went to the office of the Collector, in respect of this mooktearnamah. I saw Mr. Hedger there. He was sitting either to the right or left of the Collector, on the Bench. I did not petition the Collector at that time to make over to me the money in Burdwan. A dispute arose between me and Mr. Hedger before the Collector. After my arrival at Burdwan, I made no petition requesting payment of the money to myself; but long previous to that time, I had petitioned the Collector to pay the surplus proceeds of Lot Porunbatty to me. It might be six months or one year previous—I am not sure of the time. On the occasion I saw Mr. Hedger in the Collector's office, this mooktearnamah was shown to me by some of the omlahs. When I looked at it, I disowned

* The mooktearnamah in question.

the signature, and it was then that a dispute arose between Mr. Hedger and myself. This dispute was about this mooktearnamah. Mr. Hedger wished I should give authority to Kistnochunder Roy to draw the money, and I said, "Why should I put a knife to my own throat?—Why should I give away money belonging to myself and my brothers?" The Collector told me to put in writing what I had to state, and present a petition to him. I presented no petition, for I had no money to pay for stamps. I remained in the Collector's office with Mr. Hedger for about an hour, or an hour and a half. When Mr. Hedger left the Collector's cutcherry, I saw him and Bhugobutty Sircar, who was there on behalf of Mutty Loll Seal, go in the direction of the Principal Sudder Ameen's office. Bhugobutty is a resident of Calcutta, and in the employ of Mutty Loll Seal. At no part of the day on which I saw Mr. Hedger, did I go to the dâk bungalow; but I went about looking for Mr. Hedger and Bhugobutty, as, at Mr. Hedger's instance, the money was that day attached. I did go to the dâk bungalow. I did not go inside. I have no recollection whether I saw Mr. Hedger there or not. I did not fall at the feet of Mr. Hedger in the dâk bungalow, or elsewhere, and beg his forgiveness. I had disputed with him:—why should I go near him? I did not tell Mr. Hedger that, or any other day, that I had been advised to deny my signature to the mooktearnamah. Had I done so, he would immediately have seized me, and dragged me before the Collector. When I got up to Burdwan, the crook, or attachment from the Principal Sudder Ameen's office had been taken off. I heard on that day at the cutcherry, that by a razeenamah and a safeenamah filed that day in the Principal Sudder Ameen's office, the crook or attachment had been removed. I had not authorised any one to file a safeenamah on my part. I was still in litigation with the opposite party. I did not authorise one Surroopchunder Hazra, to file a safeenamah on my behalf. Surroopchunder Hazra and others formerly held a general power of attorney from me. Sreenath Mookerjea and Ram Koogun Mookerjea had a joint power from me. They still have it. Before 1848, I had petitioned the Principal Sudder Ameen not to allow Surroopchunder Hazra to draw any money in my name. I sent this petition*

* The following is a translated copy from the original petition in Bengalee :—

"TO THE HIGH IN DIGNITY SRIJOOT COLLECTOR SAHIB OF ZILLAH EAST BURDWAN.

Petition of Sri Joygopaul Chattopaddhya, who represents as follows :

"That Lot Kismut Porumbatty, in Pergunnah Shahabad, appertaining to the above

by dák, at the instance of Mr. Hedger, who, I believe, said, that a person on the receipt of three or four rupees per month should not be trusted with so large a sum of money. I am on my oath and won't be sure on what date I sent up this petition. I believe that Mr. Hedger also wrote a letter to the same effect to the Collector, after the sale of Lot Porunbatty, because Surroopchunder Hazra held the power of attorney which I petitioned about. In consequence of what passed, I filed a petition in the Principal Sudder Ameen's office, praying that his order on the razeenamah and safeenamah should be reviewed. The Principal Sudder Ameen commenced taking depositions, but he delayed the investigation of the case. Fearing that by the delay, my time for appealing to the Sudder Dewanny from his decision might elapse, I immediately petitioned the Sudder against the decision which he had passed. After my appeal, the Principal Sudder Ameen could not proceed. In consequence of a petition presented either by myself or my attorney, the proceedings in his office were stayed, according to practice. The case was entered into in the Sudder by Mr. Dick, who sent it back to the Principal Sudder Ameen with directions to put the proceedings on the file from which they had been removed and re-investigate the case. It was gone into by the Principal Sudder Ameen. He examined witnesses and received documentary evidence, and the result was that the razeenamah and the safeenamah were set aside. In that enquiry I was not examined. The business there is conducted by the vakeels. I mean the vakeels were examined. Surroopchunder Hazra was examined, but

zillah, is registered in my name under No. 83, in the records of your presence, but that on account of arrears of revenue due to the Government, the said Lot was sold on the 26th day of April, 1847, for the price of Co.'s Rs. 38,100 and the balance due to Government, Co.'s Rs. 1,876-10-3, being deducted therefrom, the remainder, Co.'s Rs. 36,223-5-9, stands to my credit in the Sirkar or Government Taveel. That on the 8th May, 1847, Mr. William Nelson Hedger, the attorney, wrote a letter on my behalf to the late Collector Sahib, requesting him not to pay the above sum to Surroopchunder Hazra or any other person as mooktear on behalf of Kistnochunder Roy, and on the 13th March, 1848, I caused another letter to be written to your presence by Mr. P. Homfray, the attorney, and by this my petition I pray that should any person file any mooktearnamah, on my part, and present a petition to your presence for the payment to him of the surplus sale proceeds of Lot Porunbatty, or make an attempt to receive the money by giving a receipt for the same in virtue of such mooktearnamah, you will not pay the amount to any such mooktear. I shall personally attend before your presence and receive the money, giving a receipt in the usual mode, and I further pray, that this my petition be placed on the file of Papers. This is my presentation:—year, 1848. Dated 14th March."

ORDERED

"Let this be brought forward with the papers in the Case. 15th March, 1848."

I was not present. I see this Bengali letter* bearing a post mark, dated 14th February, 1848. The body is not in my hand-writing. It purports to bear my name, but the signature is not genuine. It purports to be addressed by me to Surroopchunder Hazra. I see the other Bengali letter.† It bears date 25th February, 1848. The letter is not

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* This letter was attached to a file of papers produced from the Sudder Adawlut, put in and marked as EXHIBIT B. Translated it was as follows :—

"It is represented, with the highest blessing, that Srijoot Mutty Loll Seal instituted a suit under No. 10 in the Sudder Ameen's Court, and obtained a decree against me and other defendants; that dissatisfied with that order, I and Dwarkanauth Chattopaddhya have preferred an appea', and that Srijoot Baboo Mutty Loll Seal will file a dustburdary or deed of relinquishment, stating therein to have received the money in full. This arrangement having been fixed upon here, the Seal Baboo has written a letter to Baboo Kistnochunder Roy, therefore I write to you, that you will speak to the Roy Baboo, and have the dustburdary put upon the file of the appeal proceedings without delay, stating the money to have been received by him in full, and when the Seal Baboo's dustburdary shall have been filed in the above proceedings, you will file a dustburdary on our part also, and you will present a petition to the Judge Sahib, praying that the value of the stamp paper, on which the petition of appeal is engrossed, may be returned, when orders will be given for the restoration of the same, and so soon as a dustburdary shall have been filed on the part of the Seal Baboo, you will inform me of it, and communicate to me all other occurrences as they take place. This is written for your information the end year, 1254, dated the 3rd Faulgoon.

3rd Faulgoon, 1254.
14th February, 1848.

Having become acquainted with all the particulars mentioned in this letter, you will file a dustburdary on our part, when a dustburdary on the part of the Seal Baboo shall have been put on the file of the appeal proceedings with a statement that he has received the money in full, and write me news thereof, and you will present a petition on the subject of having the value of the appeal stamp paper returned. The end.

SRI JOYGOPAUL CHATTOPADDHYA."

† This letter was also attached to another file of papers from the Sudder Court. It was put in and marked as EXHIBIT C. The following is a translated copy :—

"It is represented with the highest blessing, that against the decree obtained by Srijoot Mutty Loll Seal, in Suit No. 10, instituted by him in the Sudder Ameen's Court against me, including the names of other defendants, I and Dwarkanauth Chattopaddhya have preferred an appeal. In that suit, Srijoot Baboo Mutty Loll Seal has written a letter to Sri Kistnochunder Roy for the purpose of filing a dustburdary or deed of relinquishment on the part of the Seal Baboo, and I have written and forwarded to you by dawk a letter for the purpose of filing on our part a dustburdary on the Seal Baboo's dustburdary being filed. I now write that Srijoot Mr. Hedger Sahib and Srijoot Baboo Ramapersaud Roy have interposed and effected at this place an amicable settlement of all matters between us; and for the purpose of obtaining the whole of the surplus sale proceeds of Lot Porunbatty from the Collector Sahib, by giving a receipt in my name, I have sent a mooktearnamah authenticated at the Calcutta Police Office to the address of Srijoot Baboo Kistnochunder Roy, but unless the seizure is removed, the money cannot be obtained. I therefore write that if a razeenamah or deed of compromise on the part of Srijoot Seal Baboo

14th Faulgoon, 1245.
25th February, 1848.

in my writing, nor is it signed by me. It purports to be from me to Surroopchunder Hazra. There are also a few lines on the back of it which purports to be written by my brother Dwarkanauth Chatterjea. But there is no signature to that portion at all, nor is it in Dwarkanauth Chatterjea's hand-writing. On the very day that I had a dispute with Mr. Hedger in the Collector's office, he instituted a suit, No. 11, in the Principal Sudder Ameen's office, making Mutty Loll Seal plaintiff and myself and others defendants. He also brought another suit, in which he himself was plaintiff, and I and others were made defendants. The day I saw Mr. Hedger with the Collector, I believe he had taken with him an order from the sheriff to attach the money there. Before I went to Burdwan, I had been made acquainted with the fact of the suits of Mutty Loll Seal and Omnapoorna Dossee against me having been dismissed, and the injunctions dissolved. I heard this at Mr. Hedger's office on the day I received the letter from Anunchunder Mittre, but before I received it, on that day I saw Mr. Hedger, and had conversed with him. He told me that I had benefited by the dismissal of Mutty Loll Seal's suits. At the same time, he showed me an order of Court bearing no seal, from which it appeared that the suit had been dismissed. He told me Mutty Loll Seal was to get the mortgage money with interest, and that I should not receive the mesne profits (*waseelut*), and he advised me not to quarrel about them. I believe he added that each party was to pay his own costs, and advised me not to quarrel. As to Omnapoorna Dossee's suit, I had the previous day some conversation with one Rajchunder Ghose, who had been a naeb in the service of Mohunchunder Burraul, as to a compromise, in consequence of which the bill was dismissed. I desired Mr. Hedger to put in a consent on my part to the dismissal

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be put in the Suit No. 28, according to the purport of the mooktearnamah executed by me, you will file a safeenamah on our part in accordance with the mooktearnamah which I have executed in favor of the Roy Baboo; and as regards the costs, if you should be able to get them, well and good; but if it be not practicable to do so, you will make our costs chargeable to us and the plaintiff's costs to him, and you will ask Baboo Bishonauth Bundopaddhya Mohashye whether he will give up Borijhattee or not. On the receipt of an answer, I shall commence an action. This you are made acquainted with: the end:—year 1254, dated 14th Faulgoon.

SRI JOYGOPAUL CHUTTO."

(On Back.)

"By this letter you will know, that Sri Dwarkanauth Chuttopaddhya offers his benediction. Having made yourself acquainted with the subject of this letter, you will file on my part a safeenamah in the Suit No. 28."

"I, Sri Surroopchunder Hazra, mooktear, write—I file this letter in the Civil Court in Suit No. 28, date 23rd Ugrohyun, 1256."

of that bill, telling him I had come to terms. I believe I told him that the terms were, that Mohunchunder Burraul's representatives would not receive back the earnest money paid to my father—that the talook should remain in my name as before—and that each party should pay his own costs. Mr. Hedger, after hearing this from me, desired me to put down in writing the authority I gave him to consent to the dismissal of Omnapoorna Dossee's bill. I look at this paper. There is my signature. This other is my father's.*

Under this agreement, I took the usual and necessary steps to get possession of Lot Porunbatty, and a decree was obtained in the Sudder in favor of my rights as to Lot Porunbatty. After this decree, I served Mohunchunder Burraul with an attorney's letter, calling on him to fulfil his part of the agreement. I called upon him to deposit the money, and to cause people on his part to put the decree in my name in execution. All this took place many years ago. He paid no attention to my attorney's letter, but filed a bill against me and others. After the decree, Mohunchunder Burraul did not expend money on his own part to assist me in obtaining possession of the property, in the terms of the agreement. That was the reason I sent him an attorney's letter. The expence of getting possession in the Mofussil after a decree would be 100 to 200 Rupees. I believe the expence in this case did come up to that amount. I had personal communication with Mohunchunder Burraul in respect of his not fulfilling his contract. I don't distinctly recollect what he told me at the time. He

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* The paper was the agreement relating to Mohunchunder Burraul's claim to the estate, and was marked as EXHIBIT D.

The instrument was dated 24th June, 1831. After reciting a sale in the previous month, by the then sheriff of Calcutta, to Joygopaul Chatterjea, of all the right, title, and interest of Rammohun Banerjea in the Talook Lot Porunbatty, and that Joygopaul had not then obtained possession, it was stated, that Mohunchunder Burraul had agreed with Joygopaul to purchase from him that talook for Sa. Rs. 9,700—Rs. 500 to be paid down, and the residue, Sa. Rs. 9,200, with interest at 3 per cent., on Joygopaul's putting M. Burraul into possession and obtaining a transfer of the talook into M. Burraul's name in the Collector's books.

Then followed mutual covenants (inter alia), "that M. Burraul, on being authorized in writing by Joygopaul, would endeavor, in Joygopaul's name, by all legal means, at his own expence and risk, to obtain actual and legal possession of the talook, and *on obtaining such possession, deposit* in the hands of some respectable bankers in Calcutta the said sum of Sa. Rs. 9,200, until the talook should be transferred into the name of M. Burraul in the books of the Collector, &c., when Joygopaul might claim and receive the amount. That M. Burraul should take the mesne profits, paying in consideration thereof to Joygopaul interest at 3 per cent. on the Sa. Rs. 9,200, up to day of payment."

The indenture contained other appropriate and usual covenants, and a proviso "that in case possession was not eventually obtained, the agreement should be void."

never deposited the 9,200 Rupees with any-body, which he had contracted to do. Had he done so, I would not have disputed with him. My belief is, that he did refuse to make the deposit. He refused, previous to my obtaining possession. I got possession of the talook in this way. Mohunchunder Burraul died: I petitioned the Sudder Dewanny, went to some expence, and then got possession. That was a long time after the death of Mohunchunder Burraul. When Mohunchunder Burraul filed his bill against me, I had not got possession. I don't recollect having had any communication with Mr. Hedger respecting that suit, but I have had many conversations with him. In February, I believe of 1848, Mr. Hedger gave me a promissory note to discount for his benefit. I believe the amount of the note was Rs. 8,500. I believe the note was payable to me or my order. It could be discounted. I endorsed that note. I believe I took it myself to the Bank of Bengal for the purpose of discount. The Bank officials received the note. It afterwards went to the Directors, who, I understood, refused to discount it. It then came back to me, and I returned it to Mr. Hedger saying, "the Bank won't discount it." I stated that I did on one occasion petition the Collector of Burdwan for the surplus proceeds of Lot Porunbatty. That was a long time ago. I was then in Burdwan, when I received a letter from Mr. Hedger, suggesting that I should get the money paid to me. I look at these letters.* Mr. Hedger knew very well that my brothers were interested in Lot Porunbatty. He did do business for me and my brothers on one occasion. A bill of sale or conveyance was prepared in his office from my nephew to my son Petumber of a 3-16th share in the talook; and an affidavit was also prepared by him, in which I, Dwarkanauth Chatterjea, and my son Petumber, were the deponents. The conveyance by my nephew to my son was not *benamee* for me. It was a sale outright to my son for himself. I was in Burdwan when the conveyance was made. Mr. Hedger got the 3-16th share registered through his people. My father-in-law, Prawnkissen Mookerjea, who is a rich man, supplied my son with the means of paying for the purchase. Prawnkissen died about a year ago. He occasionally assisted my son. I look at this affidavit. It is the one I mentioned before, and bears my signature, and those of the other deponents. I was indicted for perjury

* Four letters admitted by Mr. Hedger to have been written by him to Joygopaul. They were marked as EXHIBITS E., F., G. and H.: copies are set out at p. 62.

and tried on the prosecution of Mutty Loll Seal in December last.

[*Chief Justice.*—How do you know it was on the prosecution of Mutty Loll Seal?

Joygopaul Chatterjea.—Because I was tried and acquitted !]

On that occasion, Mutty Loll Seal, Mr. Hedger, and Mr. Michael gave evidence against me. To the best of my belief, Mutty Loll Seal was the prosecutor.

[*Mr. Dickens.*—I admit that he was.

Chief Justice.—I only wished to know whether he was the sole prosecutor. I had no doubt that he was a prosecutor.

Mr Dickens.—He was the sole prosecutor.]

I was acquitted on that trial. I was indicted also for perjury, in April last, and again acquitted.

CROSS-EXAMINED.—My father died several years ago. I do not remember the year. I remember the month. It was the month of *Assar*. I do not remember whether he died three years before I got possession of Lot Porunbatty or not. I got possession after his death—it may be one, it may be two years after. How can I tell you where Anunchunder Mittre is? I am and have resided in the gaol. How should I know? I do not know where he is. I can't tell you whether he is dead or not. I have been in gaol: how should I know? I remember giving him a mooktearnamah to act as my mooktear, but I don't remember the date. In March, 1848, when he sent me the letter I have spoken of, he *was* my mooktear. I registered a mooktearnamah before the Magistrate of the 24-Pergunnahs, which I forwarded to him. I do not know whether any mooktearnamah in his favor was ever filed in either the Collector's, or the Principal Sudder Ameen's, or the Sudder Ameen's Court in Burdwan. The letter he sent me is with my attorney. Why should I have instructed my attorney to enquire as to Anundchunder Mittre's whereabouts? I cannot say whether the paper which Mr. Hedger showed me as being an order of the Court dismissing the bill in Mutty Loll Seal's suit against me was an office copy or not. How am I to know the practice of this Court? I am not a Barrister. How am I to know the practice of the Sudder? I am not a Pleader. I was examined in a suit which Dwarkanauth Chatterjea instituted against Mutty Loll Seal, myself, and others I believe I signed the deposition I gave on that occasion. Mr. Hedger has been my attorney in this Court from 1841 to a portion of 1848. I went to him after I left Mr.

Higgins. Mr. Hedger was my attorney for about seven years. When he told me in March, 1848, that Mutty Loll Seal's bill had been dismissed, I answered all that he asked me, and which I have repeated here to-day. It did seem strange to me that a mortgagee had, after a decree of foreclosure obtained, consented to his bill being dismissed on the terms of each party paying his own costs. It also seemed very extraordinary to me that Mr. Hedger should have allowed Mutty Loll Seal to put in an answer not upon oath in the suit I had brought against him and others, as the executors of Sreenauth Mullick. Mr. Hedger told me what had been done, and I was not astonished. Considering the sport and tricks that are played in Court, nothing would be astonishing to me. When Mr. Hedger told me what had been done, I remained silent. I had no power to say anything. I could not go to fisticuffs with an Englishman. On the day I received the letter from Anunchunder Mittre, I went immediately to Mr. Homfray and got him to write the letter I have already spoken of. I don't remember the date of the letter. I speak by guess, and say it may have been the 1st or 2nd of Choyt. I read and write English a little.

[*To the Chief Justice.*—I don't remember whether Mr. Hedger said anything to me about the mode in which Mutty Loll Seal was to receive the mortgage money. All I remember he told me was, that Mutty Loll Seal was to get his mortgage money, with interest, and the costs of the mortgage.]

I look at this letter.* It is the letter I allude to. On the 13th March, 1848, I had heard from other sources, that Mutty Loll Seal had put in an answer without oath to my suit against him and others as executor of Sreenauth Mullick, and I went to Mr. Hedger the same day, and I believe he told me he had accepted such an answer from Mutty Loll Seal.

* Mr. Homfray's letter to the Collector of Burdwan, as follows :—

"To the Collector of Burdwan.

Sir,—I am instructed by Joygopaul Chatterjea, at present residing, &c., to request you will be pleased not to pay over to any mooktear or other person or persons than him (the said Joygopaul Chatterjea) the surplus money in your hands arising from the sale by your predecessor of Talook Porunbatty, situate, &c. I am further instructed by the said Joygopaul Chatterjea to inform you, that he will attend you personally to receive the said money.

I have, &c.,

P. Homfray,

Attorney for Joygopaul Chatterjea.

March 13, 1848."

I got into possession of Lot Porunbatty under the decree of the Sudder Dewanny a long time ago—about ten or twelve years ago. I can't remember the particular year. The Government revenue of the talook was Rs. 5,480-10 annas and some pie per annum. I paid revenue, and had a profit in hand. I cannot tell you, without reference to my papers, whether the profit was larger or less than the Government revenue. When I had the estate in my own name, the profits used to be Rs. 3,000 or 4,000. I cannot from memory tell you how long the talook was under my sole management. To be able to tell you, I must refer to my papers. Mr. Hedger has put in a petition to make me an insolvent, but I don't wish to take the benefit of the Act. I am not insolvent. But Mr. Hedger and Mutty Loll Seal can do every thing. They can make me an insolvent when I am not one in fact, they can dismiss bills and put in answers not upon oath to my prejudice, without my consent, and they can send me to goal and keep me there. I decline answering where my papers are. Ask me any question relevant to this indictment, and I shall answer it; but my papers can have nothing to do with this indictment.

[*Mr. Dickens* insisted upon knowing where the witness' papers were.

Mr. Peterson interfered, and desired his client, Joygopaul Chatterjea, not to answer that question.

The Chief Justice said, if Mr. Peterson objected to Mr. Dickens' question, his proper course was to refer to the Bench, and not to advise the witness not to answer. What was Mr. Peterson's objection?

Mr. Peterson said, the witness had not filed his petition for insolvency, but had only been adjudged an insolvent on the petition of Mr. Hedger, whose claim he disputed. Until therefore the Insolvent Court made a regular order directing him to deliver his papers to the Official Assignee, there was no duty upon him to do so; and he (Mr. Peterson) objected to the party being entrapped into any answer with regard to them which might be used to his prejudice elsewhere.

The Chief Justice.—The question is simply—"Where are your papers?" We are of opinion that it may be put, and must be answered. It is impossible to say whether questions put in cross-examination should ultimately prove to be relevant or not, but we must assume that they have an object. Of course, the witness need not answer any questions which would criminate him; but there can be no legal protection for a party adjudged an insolvent to conceal his papers. On

the contrary, it is incumbent upon him to produce them. When he says, " I cannot answer your question without reference to my papers," the next question naturally is, " Where are your papers ?"]

Mr. Dickens.—Where are your papers ?

Joygopaul Chatterjea.—What papers ? Unless you describe the particular papers you want, I will not answer your question.

[*The Chief Justice to the witness.*—The Court will protect you from any disclosures which you are not bound by the law to make. But those questions which you should answer, you *must* answer. You say you cannot reply to certain questions that are put to you, without looking at your papers. You have therefore some papers in your mind, and you must state where they are.

Joygopaul Chatterjea, however, persisted in saying he would not answer the question unless the particular papers wanted were specified.]

Mr. Dickens observed, as the witness had said he could not state the precise amount of the net rental of Lot Porunbatty, he wanted to know where were the *Jummabundy* papers belonging to that talook.

Joygopaul Chatterjea —I do not know where they are. They were in the talook, and Mutty Loll Seal took them away when he got possession of the property. Surroopchunder Hazra was my mooktear in Burdwan for some short time. I don't remember how long. He was my mooktear more than one year—it may have been two years or two years and a half. I used to receive letters from him during that time. I can't tell you where they are ; for I am a prisoner in gaol. I can't tell you whether they are in my house, or whether the sheriff has taken them away. I cannot say whether there are any papers in my house in Bhowanipore, for I am in gaol. Petumber Chatterjea, my son, knows : he is behind me now. I still cannot say where my papers are. They are distributed between the Sheriff, my Attorney, and my Counsel ; and what remains in my house, I don't know. I look at this, which purports to be a petition bearing my signature. I cannot say whether the signature is mine unless I read the petition.

[*Mr. Dickens* declined to allow the witness to read the paper.

Mr. Peterson submitted that the witness was entitled to read the petition before he spoke to the signature, otherwise the party might be entrapped into an admission by a very good imitation of the hand-writing.

The Chief Justice.—The rule of evidence is, that if a witness is examined upon *the contents* of a document, the document itself should be put into his hand, that he might read it. But that is not the case when the party is examined only as to the *hand-writing.* The witness here is asked to look at what purports to be his signature, and say whether or not he believes it to be his. He can have no difficulty in doing that, without examining the body of the paper.]

Joygopaul Chatterjea.—This signature is like mine. I cannot tell you whether I believe it to be mine unless I read the contents.

(*Mr. Dickens* said, to save time, he would let the witness read them.)*

Yes, I think this may be my writing. I think I know Surroopchunder Hazra's hand-writing. I look at this letter from me to Surroop. (Dated 8th May, 1847). I cannot say whether it is my hand-writing before I read it. Yes, I think this is my hand-writing. I look at this other letter (dated 12th May, 1847.) I believe this to be in my hand-writing. I look at this letter, purporting to be from me to Surroop, dated 27th May, 1847. The body is not in my hand-writing, and my belief is that the signature is not mine either. I look at this letter, dated 12th June, from me to Surroop. It is mine. I look at this letter from me to Surroop, dated 22nd of June, 1847. I think it is mine. I look at this letter from me to Surroop, dated 29th June, 1847. It is mine.

(*Mr. Peterson* said he would relieve Mr. Dickens by admitting at once all the letters, except the two marked B. and C., and dated the 14th and 25th February, 1848. Joygopaul denied that these were genuine.)†

The admission was taken.

* The paper purported to be a petition from Joygopaul Chatterjea to the Collector of Burdwan, dated the 14th of March, 1848, and stated, among other matters—" *I shall personally attend before your presence, and receive the money* and give a receipt in the usual mode." A copy of this petition will be found at pp. 38 and 39.

† These letters were twenty-two in number. They all purported to be from Joygopaul to Surroopchunder, and were brought from the Sudder Dewanny Adawlut, where Surroopchunder had filed them as evidence of his authority to file the safeenamah, which Joygopaul repudiated. The Counsel for the defence relied on all of them, and particularly on those dated 14th and 25th February (*see notes pp.* 40,) and on the *2nd item* of another letter of previous date, a translation of which letter is as follows :—

With the highest blessing I represent, that yesterday I received yours of the 24th and became acquainted with the news which it contains; you have made mention that the grounds of appeal have not been filed; I sent one piece of paper for writing the grounds of appeal on; and a draft of the grounds together

27th Maug, 1254.
8th February, 1848.

EXAMINATION CONTINUED.—I appointed Anunchunder Mittre and Muddoosoodun Gangoly as my mookteears in the place of Surroop, whom I dismissed. They had nothing to do with money matters, however; they were only to keep me supplied with news, and to look after my letters. I don't know whether they have filed any mookteearnamah from me in any Court in Burdwan. Surroop had taken up his lodgings at my lodging-place in Burdwan, and for that reason I used to write to him. I may have been in the habit of remitting money to him to pay pleaders. If I have stated in the letters produced that I sent him money to pay pleaders, I must have sent it. I may have gone to Mr. Hedger's office on the 12th February, 1848, or the following day. I was not in the habit of going there every day. I had other business to attend to—such as my cases in the Sudder, my suits in the Mofussil, &c. I was not his servant to go to his office daily. I went there generally. Mr. Hedger did give me a promissory note, but I can't say positively that he gave it to me

with all other papers in the cause made up into a parcel on the 28th January, by dawk, bearing postage, to Sri Brijonath Chowdry and Moonshee Tuhoorut Rahim, vakeels, and I wrote to them again on the 2nd and 7th February in positive terms to file the grounds, but the vakeels have not as yet written to me that they have filed the grounds. I therefore write to you, that you will desire the vakeels to take measures to file the grounds within the limited period, as in the event of the proceeds of the appeal being abstracted, they shall be held responsible.

2nd Item. A negotiation for a settlement with Srijoot Mutty Loll Seal is going on, but it has not as yet been concluded. I imagine, however, that a settlement will be effected, but it rests on the will of Providence. The Seal Baboo has said to Mr. Hedger—"I will not quarrel with the Chuttopaddhya Mohashye ; you will interpose between us and bring the matter to a termination."

When the settlement is effected, I will write to you ; you will, for the present, see that the grounds of the appeal are filed, because even in the event of a settlement taking place, I shall have the value of the stamp restored to me.

3rd Item.—As to what you have written respecting the reparation of the palkee, it is a matter of much astonishment. You will tell Brother Srijoot Baboo Kistnochunder Roy to call upon the person who took away my palkee and kept it concealed for so long a period and spoilt it, and to obtain from him the cost of repairing the same, and having repaired it, to keep it ready, and you will tell brother to prepare my account and send it to me by dawk banghy.

4th Item.—You will go to Srijoot Bishonauth Bundopaddhya and ask him whether he will give me an order of possession of Mohal Boreej Hate or not; if he will not, you will obtain a decisive answer from him and inform me of it, when I shall commence an action.

I suspend doing so until I hear from you. The suits in respect of the Tiretta Bazar, et cetera, have not been decided in the Sudder.

The sale of the Garden-house at Ramkristnopore, belonging to Sreenauth Mullick, was postponed on the 31st January in consequence of an opposition entered by Mutty Loll Seal—that opposition has since been dismissed and an order made to effect the sale and the proceedings, on the opposition entered in respect of Lot Rogoonauthpore having come before a full bench in the Sudder on the above date, the opposition was rejected, and an order has issued for the sale of the property. These two properties will be sold under my decree. This is written for your information, year 1254, date 27th Maugh.

on the 12th February, 1848. I took it to the Bank of Bengal the same day, and immediately after he gave it to me. After leaving it at the Bank, I believe I came back to Mr. Hedger and said that the omlah of the Bank had taken the note for discount. I believe, but I am not sure, that I got the note back from the Bank the day following. I brought it back to Mr. Hedger the very same day—as soon as I got it from the Bank. Mr. Hedger wanted my name because the Bank would not discount a note upon only one name. I was, I suppose, in good credit at the time. I had not then been arrested, nor had my house then been sold. I don't remember having ever before discounted a bill at the Bank, but I had borrowed from it on pledge of Company's Paper. I don't remember whether Mr. Hedger had asked me to lend him my name to a note before. I had done a good deal of business for him and I did not think it very strange that he should ask me to lend him my name on this occasion. I had realised 8 or 9,000 Rupees for him from Ragonauthpore, on one occasion. But that was not on an accommodation note. The money was rent of a talook.

I was examined in Dwarkanauth Chatterjea's suit against myself, Mutty Loll Seal, and others. This is a copy of my deposition, taken down by Mr. Belchambers, deputy registrar of the Court. It bears my signature.

*Mr. Ritchie (referring to the deposition).**—Then how came you on that occasion to say nothing about having gone to the Bank of Bengal to discount the note ?

A.—I believe I did state that fact on that occasion. You examine me in Bengali : your officer writes my answer down in English :—how can I say whether he writes all that I state or not ! It is true I signed the deposition ; but its contents were not explained to me.

Q.—In another, and earlier part of the same deposition, you say, " I got the promissory note from Mr. Hedger, which I endorsed by signing my name on the back of it. *I then returned to Mr. Hedger.* I endorsed it because Mr. Hedger said *he* would get it discounted for his own benefit." How came you to state on that occasion that you returned it to Mr. Hedger after endorsing it when you now state that you took it to the Bank for discount ?

A.—I say again I took it to the Bank for discount. If I did not take it to the Bank, did the wind blow it

* Mr. *Dickens*, who had hitherto cross-examined the witness, retired through fatigue, and Mr. *Ritchie* continued the cross-examination.

there? How could I hear of the Burraul claims against me having been assigned to, or purchased by, Mutty Loll Seal? My belief is, that I first heard of Mutty Loll Seal having bought them up when I was examined in the suit of Dwarkanauth Chatterjea, or a day or two before. There were mere rumours about the purchase. Brijonauth Dutt and Omnapoorna Dossee, as executors of Burraul, were plaintiffs in the action of Mohunchunder Burraul against me. I don't remember when it was that I heard the rumour about Mutty Loll Seal conducting the case or having bought up the claims of Burraul. If I heard the rumours, I could not confide in them. How can one put faith in all one hears? I heard the other day that Mr. Peterson had been poisoned. Has that rumour proved to be correct? If Mutty Loll Seal were carrying on the cause, he would have given me notice to that effect. These rumours were not trustworthy. I heard them, but I did not believe them. Six months before the 12th February, 1848, the date of the alleged mooktearnamah, I had not heard of Mutty Loll Seal having purchased the claim of the Burrauls.

[*To the Chief Justice.*—I don't believe Mr. Hedger knew of Mutty Loll Seal having purchased the Burraul claims, for if he did, he would have informed me.]

Q.—In one of his letters to you, Mr. Hedger, after stating that the suit of Mohunchunder Burraul and the suit of Mutty Loll Seal against Joygopaul Chatterjea had been dismissed, concludes by remarking, "*I think I have now given Mutty Loll Seal a pretty lesson.*" Did you understand this allusion to Mutty Loll Seal to have reference to both the suits, or to only one of them?*

A.—I believed it to have reference to both the suits. I mean (*correcting himself*) that I did not understand that the allusion had any connection with Mutty Loll Seal, but that both suits were taken off the file. In my letter of 2nd October, 1847, to Suroopchunder Hazra, I may have threatened to indict "the Seal Baboo for giving bad advice" in the Burraul suits?

Q.—Must you not then have known of Mutty Loll Seal's connection with the Burraul suits?

A.—Why should he have any connection with them?

Q.—Did you not, when writing that letter, contemplate

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*The Counsel for the prosecution laid great stress on the effect of these letters (EXHIBITS E., F., G., H.)—copies are set out in extenso at the close of the evidence, p. 62.

an indictment for subornation of perjury against Mutty Loll Seal for the advice he had given in the Burraul suits.

A.—I cannot tell you what came across my mind when I wrote that letter.* We zemindars have frequently to write to our agents in our talooks, so as to impress upon the ryots that we are not persons to be trifled with, and we thus keep them in order. Mutty Loll Seal had been telling every body that he would subdue me: I had determined to subdue him, and a very severe litigation was going on between us at the time.

Q.—And for this reason you threatened an indictment for subornation of perjury against him, in consequence of his having given advice in a suit in which, so far as you knew at the time, he had no personal concern?

A.—It was necessary that I should inspire some fear into the people of Burdwan, to support my name, owing to the false reports which Mutty Loll Seal had spread to my prejudice. I have said I entered into a treaty with a servant of the Burraul family to settle the Burraul suit. That was after I had indicted Brijonauth Dutt for perjury, and he had been acquitted. I don't remember the date of the trial and acquittal. I treated with Rajchunder Ghose, naeb of Mohunchunder Burraul, who continued to be naeb of the executor (Brijonauth Dutt) and executrix (Omnapoorna Dossee). They were to give up all their costs, all the earnest money paid to my father—viz., 500 Rupees—and all claim to the estate. I was to pay my own costs! The Burraul costs could not have been so much as 4,000 or 5,000 Rupees. There was no consideration for their giving up all that they consented to give up. Before the last interview I had with Mr. Hedger as attorney, I certainly did inform him of this compromise. I have already said that it was upon acquainting him with it that I authorised him to dismiss the Burraul bill in equity. I gave him this authority some days before the bill was dismissed. I did not acquaint Mr. Hedger before effecting the compromise. I had benefitted by it, and saw no necessity to refer to my attorney and pay costs.†

* The following is an extract: "The answer to the late Mohunchunder Burraul's second action is in course of preparation. I have indicted his son-in-law for perjury—on the court opening he will be transported. After that, for giving bad advice, I will present an indictment in the name of the Seal Baboo (*Mutty Loll Seal*), &c. This time I have caught the Seal Baboo in a snare."

† (*Joygopaul* here appealed to the Bench in great apparent distress, saying, he had been oppressed and worried—ruined and imprisoned, and if the Court would not help and protect him, it would be a relief to him if their Lordships would put an end to his sufferings by ordering him to be hanged!)

When Mr. Hedger suggested I should compromise Mutty Loll Seal's suits, I don't remember whether he suggested I should also compromise the Burraul suits. I don't remember he ever told me that I was in considerable danger from the Burraul suits. I was not aware that, if those suits should prove successful, they would sweep away the whole of the surplus proceeds of the talook in the Collector's hands. If I had thought so, I would not have bought the shares from my brothers, nor would Mutty Loll Seal have taken an assignment of the mortgage. I was to have received the purchase-money of the talook with interest from the Burrauls. The agreement between me and Burraul states that the interest should be only 3 per cent., and that I should account for the mesne profits. On receiving the letter from Anunchunder Mittre, from Burdwan, stating that a mooktearnamah had been filed there, I did not go back to Mr. Hedger, to seek for an explanation. I said to myself, "After all this, should I go to him, I don't know what he might do to me." Is it in reason to be supposed that, after I had learnt these circumstances I should go to him for an explanation? The letter I received from Burdwan satisfied me, and I wanted no explanation from Mr. Hedger. To save my head, I proceeded at once to Burdwan. At that time, I did not know who had commenced the forgery. I went to Mr. Homfray, instead of to Mr. Hedger, because, on receipt of that letter, I had a bad opinion—I lost confidence in Mr. Hedger. Mutty Loll Seal's bill against me had been dismissed by him without reference to me, and he had received an answer from Mutty Loll Seal to my suit against the executors of Sreenauth Mullick without oath; and how could I have any confidence in him after that? It was my intention to issue an execution against Mutty Loll Seal. I cannot say whether he did tell me that the bill in Burraul's suit had been dismissed, when he told me the bill in Mutty Loll Seal's suit had been dismissed. When he told me that Mutty Loll Seal's suit had been dismissed, I left his office much distressed in mind. I intended by that suit to subdue Mutty Loll Seal for having sold the talook for less than its value.

Q.—But you collected a net rental of only 3,000 or 4,000 Rupees, when the talook was in your sole management —you agreed to sell it to Mohunchunder Burraul for Rs. 9,000—you bought two-fifths of your brothers' shares for only Rs. 5,000, which gives a valuation to the whole property of Rs. 10,000 or 12,000;—and yet the talook sold for Rs. 38,000. Was that selling at an undervalue?

A.—My son Petumber Chatterjea purchased from Beressur Chatterjea, in 1846, a one-fifth share for 2,500 or 3,000 Rupees. On the day I left Mr. Hedger's office in despair, I believe I heard of the dismissal of the bill in Burraul's suit. I did instruct Mr. Homfray to write to the Burdwan Collector that I would attend his Court personally to receive the money in his hands. When I gave that instruction, I did intend to go personally to Burdwan, and receive the money. Following up that, I sent this petition to the Collector, dated 14th March, 1848, by the post. That petition again expresses my intention of going to claim the money in person. I never changed that intention. When I went to Burdwan, I went merely to ascertain who had filed the mooktearnamah. My intention always was to receive the money personally and not through a mooktear. On the day I met Mr. Hedger at the Collector's, I could not have taken out the money even if Mr. Hedger had not opposed me, for it was under attachment.

25th August.

Cross-examination of JOYGOPAUL CHATTERJEA *continued.*

Q.—In the evidence which you gave in Dwarkanauth Chatterjea's suit, and which was taken down by the Deputy Magistrate of the Court, and signed by you,—you made a statement to the effect "that the bill and injunction in the Burraul suit, as well as those in Mutty Loll Seal's suit, had been dismissed by Mr. Hedger without your consent"—how do you reconcile this with your present statement "that the injunction and bill in Mutty Loll Seal's suit alone were dismissed by Mr. Hedger without your consent, and that the bill and injunction in the Burraul suit were dismissed by his authority and under his instructions?"

A.—I state now what I stated yesterday—viz., that I was examined in Bengali: what was taken by the officer in English, I know not. I signed the deposition, but its contents were not explained to me. I was told to sign, and I signed.

Q.—Then, if you stated in Dwarkanauth Chatterjea's suit what appears in the written deposition, you made a mistake?

A.—You are referring back to matters which took place a long time ago. How can I charge my memory as to them? I give my answers as my recollection serves me now. What I said then, I don't recollect now:—nor do I know what the Court officer has written. The transactions to which

you allude, occurred about seven or eight years ago. I can't enter into trifles. I can't recollect them all here.

Q.—Did you not, in your answer to Mutty Loll Seal's bill, state in effect, that it was *after* receiving Anunchunder Mittre's letter from Burdwan and *after* Mr. Homfray had written to the Collector at your request, that you went to Mr. Hedger and heard of the dismissal of the bills ?

A.—I state now what I recollect. As to what is contained in my answer—I don't know the law. The answer was framed by Counsel, and explained to me by my attorney, and I signed it as explained. Yes, I did also swear to it. I don't recollect whether the twenty-two letters put in yesterday, were shown to me at the Principal Sudder Ameen's on the 2nd July, 1850, when Surroopchunder Hazra relied upon them. They may have been, but I don't recollect. My vakeels were there and spoke for me.

Q.—Do not fence with the question. You are asked did *you personally* deny before the Principal Sudder Ameen that these letters were either written or signed by you, or sent by you through the post ?

A.—There the vakeels speak, and are not upon oath. I myself was present, but I was not upon my oath.

Q.—That is no answer. The question is, did you yourself repudiate these letters ?

A.—My recollection is that I denied having written or sent two letters in particular. After that a lot of letters was produced, but whether these were among them or not, I don't know. I may have been questioned about the twenty letters you show me ; but I did not look at them, or read them.

Q.—Did you not deny that any one of them had been written or sent by you ?

A.—The answer was given by my vakeels. They had consulted amongst themselves. As the papers were produced at the trial in the Principal Sudder Ameen's cutcherry, my vakeels said it was not necessary to admit the letters.

Q.—Did you, or did you not, after consultation with your vakeels, positively deny that the letters had been sent by you ?

A.—In consequence of advice given me by my vakeels, I did deny—no *(correcting himself) I* did not deny, but my vakeels did.

[*Q.*—*By the Chief Justice.*—You are asked not whether your vakeels, but whether you yourself denied.

A.—My vakeels denied, after having consulted with me.]

Q.—Did you yourself deny, after having consulted with your vakeels ?

A.—I do not recollect.

Q.—Is it because you have consulted with your vakeels that you now deny the letters, Exhibits B. and C. ?

A.—I deny them now because they are forgeries.

Q.—I find the following record made by the Principal Sudder Ameen, on the 2nd July, 1851, with reference to the twenty-two letters I am examining you upon :—" This day, the letters annexed were shown to Joygopaul Chatterjea, and he was asked whether they were his and had been sent by him through the post. He said, ' All these letters are not in my hand-writing, and they were not sent by me through the post.' " Is that a correct record of what you said ?

A.—I was present at the trial, my vakeels consulted and an answer to that effect was given.

Q.—But by whom ? Was the answer given by you ?

A.—An answer given by my vakeels is tantamount to an answer given by myself.

Q.—Then you did deny, and intended to deny, all the letters, either personally or by your vakeels ?

A.—I did deny them then, but I have not denied them here, because I am making my statements upon oath. I look at these two cheques. They are both signed by me in English. One is dated 28th November, 1846, and is for 38 Rupees, and the other is dated 26th May, 1847. Perhaps Mr. Hedger was my attorney in a suit of mine against Mr. Adam Freer Smith as sheriff. I brought an action against the sheriff. Mr. Hedger was the attorney, and the agreement was, that if I gained, he was to have a share (whether 10 annas or 6 annas, I don't recollect) in the money I recovered. All the suits and actions I had after I left Mr. Higgins were conducted by Mr. Hedger. How can I say where my nephew Beressur Chatterjea is, or where my brother Dwarkanauth Chatterjea? I have been in gaol all this time.

Re-examined.—One Seeboopersaud Bose drew up the agreement between Mr. Hedger and myself in my suit against Mr. Adam Freer Smith. He was Mr. Hedger's cash-keeper. Mr. Hedger drew up the agreement and saw it executed. Mr. Michael attested the execution. The agreement was drawn up in Seeboo Baboo's name, and not Mr. Hedger's, because Mr. Hedger said, as he was an attorney, he would not use his name. The whole of the expences of the action was defrayed by Mr. Hedger. I believe I lost the action. At that time Mr. Hedger did not call on me for the costs ; but afterwards when he and I quarrelled, he included them in his bill, and arrested me under a *capias* and

sent me to prison. I can't say whether Seeboo Baboo is still in Mr. Hedger's service, for I have been in gaol. When these twenty-two letters were produced in the Principal Sudder Ameen's Court, I was present. The two letters which I have denied here, were among them. They had been placed there before. The other twenty letters were brought into Court for the first time that day, during the investigation. I don't remember whether the vakeels assigned to me any reason for denying the letters. On my denial, Surroop did not proceed to prove the letters. Independently of the twenty letters I have spoken to, he proved one letter. My reasons for not going to Mr. Hedger to seek for an explanation about the information conveyed to me in Anunchunder Mittre's letter from Burdwan, were, that I was all anxious to prevent the payment of the money out from the Burdwan Collectorate, and I therefore went at once to Mr. Homfray, to write to the Collector for that purpose by the post of the same day. I did not go to Mr. Hedger afterwards. I thought Mr. Hedger had made up with Mutty Loll Seal, and was siding with him, and that he would do nothing which would ultimately tend to my benefit. The suit in which Mutty Loll Seal's answer had been taken without oath, had connection with Lot Porunbatty. I believe, but can't be sure, that I first heard of the answer, not on oath, having been accepted, either the day before or the day after I received the letter from Anunchunder Mittre, from Burdwan. I did say, in a former deposition, "I heard of the dismissal of Mutty Loll Seal's bill, but I did not give my consent to it." I do not remember that I also said—"People connected with the suit told me before it was dismissed that it would be dismissed." Neither Mohunchunder Burraul, nor any of his representatives after his death, deposited the 9,000 Rupees for Lot Porurbatty, which he had contracted in the agreement to do. I don't remember whether the money was ever tendered. The suit brought by me against Sreenauth Mullick, or rather his executors, was for mesne profits. If I had succeeded in that suit, the money would of course have gone to Mohunchunder Burraul, had he performed his part of the contract. I corresponded with Surroop after I had written to the Collector not to pay out any money to him. I did so because I had no personal dispute with him. On the contrary, he was entertained in my lodging for about a year after I had written to the Collector. After the time, when I discovered the alleged mooktearnamah, he was not living in my lodging, for the river had washed my hut away. At the time Mutty Loll Seal's answer

was taken without oath, a writ had been delivered by Mr. Hedger into the Sheriff's office. Mutty Loll Seal was in contempt for not filing an answer.

RADIKACHURN MITTRE.—I am a writer in the Bank of Bengal. It is not in the course of my business to receive bills tendered in the Bank for discount. I can speak as to the custom. Bills for discount are presented either to the dewan or the secretary. When a bill for discount is presented to the dewan or the secretary, it is entered in this bill book, after it has been examined. I refer to the entries in this bill book in February, 1848. Under date 15th February, 1848, there is this entry, " Note of Mr. W. N. Hedger—Rs. 8,500,—12th February, 1848,—one month date, endorsed and discounted, Joygopaul Chatterjea." The entry is in the hand-writing of Bissonauth Seal, who is dead. It was his duty to make this entry.

I see from another entry in one of the books I produce, that in December, 1847, Rs. 5,000 had been advanced to Mr. Hedger. In the first entry I have spoken to, the word *nil* appears opposite the name of Joygopaul Chatterjea. That means that he was under no liability to the Bank.

[*The Foreman.*—The 5,000 Rupees advanced to Mr. Hedger was not a loan, but a discount—was it not?

A.—It was.]

In February, 1848, there was an order that the Bank should not receive notes not negotiable, or payable to order. Before this entry was made, the note must have been seen by the secretary, the dewan, and by the party who made the entry. Had it been seen that the note was not negotiable, the fact of the tender would not have been entered in the book.

[*To the Chief Justice.*—If the dewan saw the words " or order" wanting in the note, he would send it back, that they might be supplied. If the note was brought back with the omission supplied, he would enter it, but not otherwise.]

[*To the Foreman.*—An English note is generally presented to the secretary; but it is sometimes presented to the dewan instead. In the ordinary course, the note first goes to the secretary. If he is willing to pass it, he does so; but if he is not, he sends it to the Directors. I cannot say what became of Mr. Hedger's note ultimately, but from an entry in this other book, I see it was returned on 16th February, 1848. This entry is also in Bissonauth Seal's

hand-writing. The name "Joygopaul Chatterjea" is written opposite. I cannot say whether the signature is Joygopaul Chatterjea's or not. It is the custom for persons receiving back notes on which discount has been refused, to sign their names to entries like this in this book.]

CROSS-EXAMINED.—Madubchunder Sein was dewan of the Bank at the time. He is employed in the Bank to this day. I did not see this note. It appears from the entries in the two books to have been presented on the 15th February, 1848, and returned on the same day. I cannot say that no informal note was ever sent to the Bank, of which the informality was not detected before the fact of the tender was entered. If at any time such a mistake had occurred, the word "*cancelled*" would be written across the entry as soon as the mistake was discovered. I do not know of any case in which the informality of a note presented for discount was first discovered only by the Directors.

RE-EXAMINED.—I produce these two cheques from the Bank of Bengal.* One is endorsed by Petumber to Mr. Hedger and Beressur, and the other to Mr. Hedger alone.

W. H. GRANT, *Clerk to the Chief Magistrate of Calcutta.*—I have been in my present office twenty-four years. I am in the habit of seeing mooktearnamahs brought to the Police for acknowledgment, very often. The custom is for the Magistrate to sign his name to an acknowledgment written on the face of the instrument. When a party personally appears and acknowledges his signature, the form of acknowledgment which the Magistrate signs is, "A. B. personally appeared before me, and acknowledged to have executed this mooktearnamah." In case the party himself does not appear, but witnesses come and speak to his signature, the form of acknowledgment is, "A. B. and C. D. personally appeared before me, and on their solemn declaration said, they saw E. F. execute this mooktearnamah." That is, when two witnesses come. When only one comes, the form of acknowledgment is the same, except of course that the name of only one witness appears in it. I have very often seen one witness attest a mooktearnamah. In Bengali cases, I

* Two cheques from the grandfather of Petumber Chatterjea in favor of Petumber Chatterjea, put in to show Petumber's ability at the time to purchase a share in the Talook.

have seen many mooktearnamahs acknowledged by only one witness. When the Government received a fee of 2 Rupees for each acknowledgment, the acknowledgment used to be entered in a book in the Police. But since fees are no longer taken (now four or five years past) the entries are not made in a book. The entry in this case was made in a book. This book has been looked for, but cannot be found. I was examined as a witness on the first trial of Joygopaul Chatterjea, but not in the suit of Dwarkanauth Chatterjea *vs.* Mutty Loll Seal and others. The attestation on the face of this mooktearnamah (the one in question) is, "J. C. Michael appeared before me this day, and acknowledged the signature to this mooktearnamah to be correct.—F. W. Birch."

Cross-examined.—This signature to the acknowledgment on the face of the mooktearnamah is Major Birch's signature, and this is his seal. This form of attestation would, I believe, be also used if the party signing the mooktearnamah had himself appeared, and the acknowledgment had been made by an attesting witness.

Re-examined.—But if the party signing the instrument himself appeared, and personally acknowledged his signature, that would not have been the entry.

George Aviet, *Interpreter of the Supreme Court.*—I have been an Interpreter of this Court only three years, but have had considerable experience in Bengali handwriting. The signature in this Bank of Bengal book is "Joygopaul Chutto." The signature in this mooktearnamah is "Joygopaul Chuttopaddhya." The additional dissyllable however makes no material difference. The signature in the Bank book is off-hand : that in the mooktearnamah is steady. Both may have been written by the same hand, with a different pen. The signature to this deposition of Joygopaul Chatterjea in the suit of Dwarkanauth Chatterjea, is very much like the signature in the mooktearnamah, as regards the formation of the letters. There is a very slight difference in the formation of the initial letter *J;* but all the other letters are alike in both documents. I never saw Joygopaul Chatterjea write. The Joygopaul (leaving out the *J*) are as like each other in both as letters can be. The signature of a Bengali, written with a Bengali pen, would most certainly be different from his

signature written with an English pen. I look at Exhibits B. and C. The signatures in both are " Joygopaul Chutto," and the initial *J* in each is formed very much like the *J* in this deposition.

When witnesses sign their depositions in this Court, I don't know with what pen they sign. I have sometimes seen them sign with an English pen.

ISSENCHUNDER GUNGOPADDHYA.—I know Joygopaul Chatterjea. This signature in this deposition is in his hand-writing. This signature in a Bank of Bengal book is also his. This signature in the mooktearnamah is not his. One or two of the letters may resemble his, but, on the whole, the signature is unlike. I and Joygopaul married two sisters, and I am familiar with his signature. I don't know his English signature. I was at his talook Lot Porunbatty for three years. This signature to Letter No. 13 is his. It is his hand-writing. I cannot say whether the signature in this paper (the mooktearnamah) is his.

[*To the Chief Justice*.—I have seen this document only once before. I saw it on the day the bill was found on this indictment.]

MAHOMED ALI.—I am a vakeel in the Principal Sudder Ameen's Court in Burdwan. I was employed by Joygopaul Chatterjea in, I believe, two of his suits. The signature to this deposition is his. So is the signature in this Bank book. So is the signature on the back of this cheque. The signature on this mooktearnamah is not his. The first letter *J* is quite different from the corresponding letter in the other papers. Some of the other letters are alike, but some are not. I think there is also a difference in the letter Y; I see no difference in the other letters.

CROSS-EXAMINED.—Letter No. 9 is his hand-writing. So is Letter No. 10. So is this Letter No. 6. It bears no signature, but the letters in the body are in Joygopaul Chatterjea's hand-writing. I look at all these twenty-two letters, and say that they all appear to me to be in his hand-writing, with the exception of this (No. 6.)

Letter No. 4 is in his hand-writing. So is this (Exhibit B.), both body and signature. The signature was not affixed in my presence.

The principal Exhibits put in evidence on behalf of the prosecution were as follow :—

A—The mooktearnamah (repudiated by Joygopaul.)

B—Letter from Joygopaul to Surroopchunder Hazra, dated 14th February, 1848 (repudiated by him.)

C—Ditto, 24th February, 1848 (also repudiated by Joygopaul.)

D—The agreement with Mohunchunder Burraul.

E, F, G, H,—The four letters from Mr. Hedger to Joygopaul.*

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* To Baboo Joygopaul Chatterjea,

Burdwan.

Joygopaul,—You must *not lose a moment* in doing all in your power to *get the proceeds* of sale from the Collector. The widow of Mohunchund Burraul has filed a bill and got an injunction to prevent your getting the money.

Your's faithfully,

W. N. Hedger.

27th May, 1847.

Joygopaul,—I am glad to inform you that the motion in Mohunchund Burraul's case against you, came on this morning, and that the Court has passed an order, that the bill of revivor, filed on the 26th of May last, be taken off the file, and that the order for injunction, which was made on the same day, be set aside, and the injunction dissolved, with costs to be paid by the complainant. By to-morrow's dâk, I will send a letter to the Collector, enclosing him copies of this order, and also the order made in Mutty Loll's case, setting aside his decree of foreclosure, and I trust that you will then be liable to get the whole of the money ; in which case I expect that you will at once send it to me on your account.

I think I have now given Mutty Loll a pretty lesson.

Your's faithfully,

W. N. Hedger.

Calcutta, 8th July, 1847.

Joygopaul,—I send you, under seal of the Supreme Court, a copy of the order dismissing Mutty Loll's decree of foreclosure, file it with the Sudder Allah, and get an order for your money and send it to me.

I send you the bill of sale from Beressur to Petumber, as requested.

Get the Judge to call on Mr. McKilligan, the late Sheriff, to send to Burdwan the 18,000 Rupees deposited with him by Sumboochunder Ghose, the Sudder Ameen having returned the proceedings to the Sudder Allah, for that purpose ; also do what you can about your claim in the 18,000 Rupees which are at Burdwan.

Let all other matters stand till I am in funds.

Your's truly,

W. N. Hedger.

13th July, 1847.

J, K, L, M, N, O, P, Q, R, S, T, V—Papers in English and Bengali produced from the Sudder Adawlut (inclusive of the safeenamah and razeenamah, and also a receipt from Kistnochunder Roy for the whole surplus proceeds of Lot Porunbatty).

W, X, Y, Z—English documents (including Mr. Hedger's taxed bills of costs against Joygopaul.)

In addition to these were put in, (among less important documents) :—

Proceedings in the Burraul suits.

Proceedings in the action of ejectment, "*Mutty Loll Seal vs. Joygopaul Chatterjea.*"

Proceedings in the foreclosure suit of "*Mutty Loll Seal vs. Joygopaul Chatterjea.*"

Proceedings in the supplemental suit between the same parties.

Proceedings in Zillah Court of East Burdwan, in Suit No. 10 of 1847.

Proceedings in same Court, in Suit No. 11 of 1847.

Proceedings in same Court, in Suit No. 12 of 1847.

Proceedings in same Court, in Suit No. 28 of 1847.

Proceedings in suit for specific performance of mooktearnamah—"*Mutty Loll Seal vs. Joygopaul Chatterjea.*"

Proceedings in suit—*Dwarkanauth Chatterjea vs. Mutty Loll Seal and others.*

Entries in the books of the Bank of Bengal as to the Promissory Note for £8,500.

The two cheques in favor of Petumber Chatterjea from his grandfather.

The case for the prosecution here closed.

JOYGOPAUL,—I have been ill since last Wednesday, but am now better, get the Sudder Allah by any means to apply to the *late* Sheriff to send the 15,000 Rupees, the deposit made by Sumboochunder Ghose.

Get some decision about your claim to the 18,000 Rupees, as it must come to the Sudder.

Come to Calcutta as soon as you can, as Mutty Loll has filed a bill of supplement, and got an injunction to prevent your taking the money from the Collector, till you have put in an answer to that bill. This I can do in two days and then set aside the injunction, when you can go back again to Burdwan.

Your's truly,

W. N. HEDGER.

20th July, 1847.

Mr. Dickens now addressed the Jury on behalf of Baboo Mutty Loll Seal nearly as follows :—

GENTLEMEN OF THE JURY,—In this case, I will not dwell—for it would be improper—on those peculiar and personal considerations which make my task, grave and important as it is, one that weighs upon my mind with a sense of responsibility much greater than ordinary. I am perfectly satisfied that men, with the intelligence of those whom I address, will feel its general importance equally with myself. I shall endeavour to treat it as drily as I can, considering my relations with those whom I and my learned friends have to defend.

The first count of the indictment charges a combination among five persons to cheat the prosecutor by means of forgery and perjury : cheating is the end, forgery and perjury are the means. The second count charges, in general terms, an endeavour to cheat, omitting all mention of the means. It must be apparent, however, throughout these counts, that the cardinal point on which the whole case turns, is the genuineness and authenticity of the mooktearnamah alleged to be forged. If that is a genuine instrument, then no cheating could have been designed, and no forgery and perjury committed.

The two other counts will, in like manner, be disposed of by what may be your opinion of the genuineness of the mooktearnamah ; for they charge a combination falsely and maliciously to prosecute Joygopaul Chatterjea for denying that instrument upon oath, Mutty Loll Seal being the prosecutor, and Mr. Hedger, Mr. Michael, Baboo Ramapersaud Roy, and Hurro Chunder Sircar, supporting the prosecution by perjury. That, divested of all technicalities, is the question which you have to try. As I said before, the cardinal and turning point of the case is the authenticity of the mooktearnamah.

The most disagreeable—the least necessary part of my task, but certainly a necessary one, is to remark on the opening speech of the learned Counsel for the prosecution, and to disencumber the case of the extraneous and irrelevant observations with which he has overlaid it—observations not only unnecessary to a due consideration of the real point at issue, but tending to obscure and mislead the judgment.

I am not going to enter into any ordinary forensic contest, or indulge in unnecessary observations in a spirit of smartness and vituperation. I shall address myself to my task with a becoming sense of the solemn duty reposed upon me, and

present this case to you, bared of all the irrelevancies which the learned Counsel for the prosecution has piled upon it.

I may be mistaken, but I scarcely think my ears deceived me, when I heard Mr. Peterson hazard this assertion—"that the two former acquittals of Joygopaul Chatterjea virtually disposed of this case." If those two acquittals virtually disposed of this case, in the sense in which that term is used, they *actually* disposed of it. That was a great—a very great length to go. If this case has already been disposed of, then for what purpose are you assembled here? If it has already been disposed of, is this, or is it not, a vain ceremony, an idle pageant, a hollow mockery? Is this a trial in which twelve of the select of society have been empanelled to try the question again, solemnly upon oath? Or are they "virtually" precluded from arriving at an independent verdict by the previous decisions which proceeded upon evidence different from what you have heard, and what still remains to be adduced?

I should have been glad to be spared the remotest allusion to the former verdicts. I know not what were the reasons and considerations which influenced the minds of the Juries who returned them. I know not whether they gave the accused, Joygopaul Chatterjea, the benefit of a doubt, or whether they supposed that it lay on the prosecution to support the direct evidence of the witnesses, by collateral and corroborative testimony. I know not on what grounds they decided, and I care not. I impugn not their honor or their consciences, or their mode of arriving at a judgment; but I am bound to say that, although I impeach not the motives of either Jury, I believe the finding of both to be wrong. Why should I allude to this?—Simply, because the learned Counsel for the prosecution has alluded to it, as if the former verdicts were a bar to your forming a deliberate and unfettered judgment on the whole case, after hearing the evidence on both sides, the speeches of Counsel, and the charge from the Bench. This is what I call disencumbering the case of the extraneous and irrelevant observations with which it has been over-loaded. This is no agreeable portion of my duty, and I hope to be understood not as desiring to attack the verdicts of the former Juries, I am only, in performance of my duty, clearing the ground of the difficulties with which it has been clogged, that the defendants may have a fair and impartial trial, unprejudiced by the past.

I shall now refer to another observation made by the

learned Counsel for the prosecution. It was a strange one. In speaking of certain supposed discrepancies in the statements made on former occasions by Mr. Hedger and Mr. Michael, he made the most of them, and told you that they amounted in fact to a proof of their wilful intent and purpose to falsify the truth. But when commenting upon what he admitted were discrepancies in the statements of the chief—almost the only—witness for the prosecution, Joygopaul Chatterjea, he told you that such variance of testimony was, on these occasions, rather a proof of his general veracity. To this style of reasoning, I may well reply by quoting the vulgar adage that, "what is sauce for the goose, is sauce for the gander;" and, surely, it would be a great anomaly, if slight discrepancies, in a long narrative, protracted unto tediousness, were to be taken most strongly against several witnesses for the defence, but most strongly in favour of the single witness for the prosecution.

In this case, I must, though I rarely resort to it, occasionally refer to brief notes which I have taken of Mr. Peterson's speech. He has put it to you that the second prosecution was not only unnecessary, but vindictive—that the charge was for the same offence—that it indicated the *animus*—meaning, I presume, though he added no epithet, the *malus animus*—of the present defendants, and, to a certain extent, corroborated the present charge of conspiracy alleged against them. I do not mean, as I have said, to impugn the conduct of the Jury which sat at the second trial, nor do I say that it might not be a fair way for the now Counsel for the prosecution, then Counsel for the defendant, to present to that Jury the nature and effect of the second indictment as he did then present it. I believe the Jury on the second trial acquitted on that ground, but if they did so, they acquitted on what was a signal error; for I tell you that that indictment was *not* a second prosecution for the same perjury—that it was *not* a trial for the same offence, either technically or substantially. There were two distinct suits in which two distinct perjuries, as we allege, were committed, for two distinct objects, and in each Joygopaul Chatterjea denied the *mooktearnamah* upon oath, and swore to that which the prosecutor in these cases affirmed to be false. True it is that the *falsehood* charged, was the same in each case—the means in both were identical; but the ends and objects were different. I will exemplify my meaning more fully by a simple illustration. A. shoots at B. on a given day—the 1st of one month—with intent to kill, misses his aim, is tried, and ac-

quitted. A. shoots again at B.—say three months after—with like intent, and like result,—is again tried and again acquitted, on the ground that he has been before tried for the same offence! That, though not exactly the same, is a very nearly similar case, and I think it must be obvious to you and to all men (prejudice apart), that not one offence, but two offences, were committed by A. Nor was there the smallest malignity, vindictiveness, or oppression in the second prosecution. Joygopaul Chatterjea was as capable of defending himself in the second case as he had been in the first. The objects of the two indictments were different. Those of the second were something more than the punishment of guilt. There was the object of vindicating public justice—though this, perhaps, may raise a sneer in the countenance of Mr. Peterson—there was the object of protecting the just interests and legal rights acquired by the mooktearnamah, and of checking the proceedings of Joygopaul Chatterjea by which he sought to set it aside—and there was, besides, the grand object of vindicating the character of the prosecutor and his witnesses, which the verdict of the first Jury had prejudiced. In this, the second prosecution did not succeed; but right glad I am that the hour has at length arrived, when the unfailing Nemesis which attends all human wrongs, shall, by the result of the present trial, repair the injury inflicted by the past.

Shall I notice another observation of the learned Counsel for the prosecution, or shall I not? I am disposed to treat his speech as if the greater part of it were not heard by you, as I confess much of it was not understood by me. Shall I notice the half insinuations—half meanings, seemingly imperfectly formed in the mind of the speaker, and still more imperfectly expressed,—the vein of reproachful allusion and abuse which ran through the whole of that most tedious and protracted speech—a speech which, in a criminal prosecution, I have never yet heard paralleled for its length, its virulence, and its extreme tenacity of purpose, at all hazards and at every sacrifice of candour, to bring about a conviction? From the Court, you will, if necessary, hear what the duty of a Counsel in a criminal prosecution is, in his opening speech. It is clearly and briefly to detail the *facts* according to his instructions, and to state the evidence which his attorney has placed before him, calmly and dispassionately, with such comments only as may be necessary to explain that evidence, but with *no* comments tending to prejudice the case of the accused,—with no anticipative reply

intended to destroy the effect of their defence. I leave you to judge whether that line of conduct has been pursued in this instance. In the whole course of my life—now a period of nearly thirty years at the Bar, and twenty-eight years of considerable practice—I never heard an opening speech of such a character. The learned Counsel for the prosecution, in conducting his case, has presumed to say that the Counsel for the defence would rely on forgery, and he has brought forward, what he guessed, would be evidence for the defence, with the view of proving it a forgery *before-hand.* How could he know that of that file of letters, two-and-twenty in number, we should particularly rely on the *two last,* which he, for that reason, introduced as part of his own evidence, (namely, Exhibits B. and C.) ? What " anticipative precognition" had he of that, and whence derived, except from the letters themselves ? They were not produced by the then prosecution at the former trials—the prosecution in those cases was unaware of them. Then, were they known to the present prosecutor, Joygopaul Chatterjea, or not ? They were ; for previous to the second trial in April last, an application was made to the Sudder Dewanny Adawlut by his attorney for the papers filed in the Burdwan cases. The *nuttee,* or file, was given, and it was then carefully divided, and these letters were set apart and left in the Sudder Dewanny, nothing being produced and used at the trial in this Court, but the mere formal proceedings. It *must* then have occurred, and been pretty clearly known to the learned Counsel for the prosecution, that these two-and-twenty letters, if genuine, would be used against him on any future occasion. Their existence was unknown to Mr. Hedger and to the attorneys of my client, but by hearsay, and to me, during the whole proceedings at the former trial, and it was not until the day after, that Mr. Hedger, having heard casually of them, was led to make enquiry, and found them in the Sudder Dewanny Adawlut. Then, you have on this day a selection made from these letters, and the two which bore most heavily on the veracity of Joygopaul Chatterjea, picked out and repudiated by him for the purpose of contradicting before-hand the case for the defence. The contradiction given by him upon this point, however, we value as much as the contradiction given by him upon others. I refer to it only to notice the most unusual course which his Counsel has thought it proper to adopt. As to the rest of the opening, to so much of it as you have borne in mind, you will, doubtless, give its proper weight. I can only say, for

my own part, that if I recollected more in it that was worthy of reply, I should not have passed it over without comment. But I do not see that I need further advert to that address than to say, that I marked in it a general intention to prejudice the defence, and that a large portion of it altogether passed my comprehension.

I shall now enter upon an examination of the case presented by the prosecution, before I go into the substantive case which the defendants make. And a word, in this place, as to probabilities.—Upon that subject, I dwelt briefly in my opening on the last occasion. You do not suppose that I should so far degrade my own understanding or insult your's as to put it to you as a substantive proposition, that it is *à priori* improbable that a rich man should commit a crime. We all know, from many an example, that rich men do; that wealth, though almost unbounded,—that station, however lofty,—nay, that the rarest, and richest, and most exalted of the gifts of mind, are no guarantee against the yielding to the lowest of temptations. I need not refer to that most lamentable example displayed in the conduct and fate of the "wisest, brightest, greatest, meanest of mankind." If a Bacon could accept a bribe, no doubt, as an abstract proposition, any man is accessible to one, and we can conceive that the fallibility of human nature may lead to the commission of crimes yet unheard of, in the shape of roguery, knavery, and fraud. But, on the other hand, it is generally improbable that men beyond the gnawing demands of want —men possessed of wealth which a whole life-time dedicated to employing it well, might not suffice to exhaust, would commit crime for the sake of pecuniary gain—and *gain*, gentlemen, is the motive here assigned—still more improbable is it, that men in such stations should combine and conspire with others (one an enemy), whom they must trust and pay highly to commit it—still more improbable, that they should set in motion and employ a machinery for their purpose, which would necessitate the aid of numerous agents who must be bribed to be corrupt and criminal like themselves. If the case for the prosecution be true, this was a sprouting villainy, a root of evil with many branches; and this accursed root of evil--for if evil there were, it was most accursed —required a costly culture. On this hypothesis then, think of the probable payments, and their proportions. Work the sum in your own minds. Think what must have been the consideration in money to induce Baboo Ramapersaud Roy—the Pleader for Government in the Sudder Court, still young, and rising in life and reputation, well descended,

and inheriting the reputation of a distinguished father,* of station equal—of intelligence, perhaps, superior to my own, —to be the head that contrived, and the hand that executed a forgery, and framed this mooktearnamah. For, if there be a forgery here at all, his must have been the head that contrived, and the hand that executed it. I do not mean to say that he *wrote* the mooktearnamah which you have in evidence; but you have his own testimony, repeated over and over again, that he drafted or perused and advised it. If so, gentlemen, and if there be forgery, he was the forger, and I am at a loss to conceive why the bill was not found against him also. Then, what must have been the inducement of Mr. Michael, who, though in an humbler sphere of life, had yet a reputation to lose, and who may calculate upon being one day placed on the roll of the attorneys of this Court—what sum, I ask, could have induced him to commit this forgery, and support it by perjury? What, again, must have been the payment to Surroopchunder Hazra to join this villainous alliance? True it is, it appears, he acted as confidential mooktear for Joygopaul Chatterjea, and it is said, in disparagement of him by the prosecution, that his salary was but some four or six Rupees per month; but I need not tell you that that could not be the sole income of a practitioner in extensive business. The monthly fee which he received from a single client was not the entire sum of his individual gains. The four or six Rupees per month from Joygopaul Chatterjea may have been multiplied into a hundred-fold by his receipts from other clients. Then, supposing this, what must have been his price—what the aggregate amount requisite to set in motion and support this conspiracy? As I said before, work the sum in your own minds. In any way of viewing the case, Baboo Mutty Loll Seal was secure of his claim under the mortgage, with costs, and of his costs in the ejectment suit as between party and party, subject to an account of the rents and profits he had realised while in possession of the estate, those subject again to a deduction in his favor for the Government revenue he paid. Mr. Hedger was entitled to the whole amount of his costs in the suits which were being carried on; and a judgment of this Court that he has obtained, shows above 10,000 Rupees due to him; and Joygopaul Chatterjea himself, that most dishonest unscrupulous witness, has never pretended to say that, up to the date of the mooktearnamah which he has the effrontery to deny, Mr. Hedger was not a zealous, careful, and successful attorney. The accuracy

* Rammohun Roy.

of Mr. Hedger's demand is evidenced by the judgment, which cannot be impeached. As to the amount of the mortgage debt at the date the Registrar computed it, he found a sum of upwards of Rs. 6,000 due on the mortgage account, and interest was running on subsequently; and as to the receipts of the rents and profits realised by Mutty Loll Seal, his possession ceased with the Government sale, and while he was in possession, he had Government revenue to pay, which payment must, of course, be charged to the debit of Joygopaul Chatterjea. And you may depend upon it, Mutty Loll Seal would not have suffered the estate to be sold unless he had found the possession *damnosa hæreditas.* You heard the account which Joygopaul Chatterjea gave with respect to the rents and profits of Lot Porunbatty, of which he was himself the sole manager during a considerable portion of the time which elapsed since he acquired possession. Did you get out of him any intelligible approximation to what the net annual income of that talook had been? Suppose any one of you had an estate in the Mofussil or in England: if you were great men, you might manage it by bailiffs and stewards, and so know less about it; but even then, should you be asked to state the average amount of the annual rents, in a few years—say ten years, to—within 50 or 100£, if the income were £500 per year, would you have prevaricated and shuffled, as you saw this prosecutor prevaricate and shuffle, when examined by me on the point? I leave you to say whether he did really know the net income or not. His reason for prevaricating is apparent; he saw, intelligent and acute as he really is, that he was between the horns of a dilemma: he knew that, by the effect of the agreement with Mohunchunder Burraul, every farthing of the net *waseelaut*, or mesne rents and profits, realised from the year 1831, belonged to Mohunchunder Burraul, whether the money remained in his (Joygopaul Chatterjea's) hands, or in deposit elsewhere. He knew this, and also that, after Mohunchunder Burraul's death, his right descended to his representatives, and from them to Baboo Mutty Loll Seal, under the assignment which he purchased. Joygopaul Chatterjea was, therefore, as I have said, in this dilemma. If he made an intelligible statement of the net collection, and swelled the amount, he would be swelling the claim of Mutty Loll Seal under the assignment from the representatives of Mohunchunder Burraul. On the other hand, if he diminished the amount, he would cut down to nothing the assertion made by his Counsel, that the

rents received by Mutty Loll Seal would pay off, or nearly so, the mortgage debt. He saw this, and so would recollect nothing. And do you suppose, from what you have seen of the man, that he had not sagacity and cunning enough to see the difficulty he was in, and try to avoid being pinned on either horn of this dilemma? That, then, is the reason of his evasive answers; and I put it to you, gentlemen, as one of the many tests of his claim to credence, whether he might not have given a more intelligible answer than he has done, had he chosen,—for assuredly the amount of one's income is not among the things a careful man usually forgets; and this is a careful and acute man, exuberant in recollections, when it suits him so to be.

I will not dwell, to you, upon what you must well know regarding the character of the defendants, further than to state their relative positions. Mr. Hedger has been for two-and-thirty years on the rolls of this Court, with a character hitherto unimpeached. Mutty Loll Seal, (the "Big Baboo," the "millionaire," as the learned Counsel for the prosecution has, with anything but good taste and discretion, styled him,) though, probably, not a millionaire literally speaking, if pounds sterling be meant, is yet, as you well know, a man of very large substance. Some of you may possibly think him a man who has acquired his wealth by hard dealing in contracts, and great exaction of interest. But what of *that*? That, gentlemen, is not the crime charged against him, and which you are here to try. Is it *à priori* very likely that such a man should devise and prosecute for such an amount of gain, the conspiracy charged in this indictment?—or that Mr. Hedger, or Baboo Ramapersaud Roy, or even Mr. Michael, comparatively humble as he may be, should join in it? If the claim of Mr. Hedger for costs and advances was Rs. 10,000, and that of Mutty Loll Seal under the mortgage above 6,000 when the Registrar computed it (putting aside the Burraul claim altogether for the nonce), how do you suppose the rest of the surplus proceeds in the Burdwan Collectorate were to be distributed? Nearly twenty-four thousand rupees, or thereabouts—you will observe—even leaving out the Burraul claim as worthless, which it was not—were secure to the conspirators, not only without villainy, but by legal decision. Every thing which has been confessed on the side of the prosecution itself, shows that, (independently of the hostility between Joygopaul Chatterjea and Mutty Loll Seal,) much greater and more bitter hostility existed between Mutty Loll Seal

and Mr. Hedger as attorney of Joygopaul Chatterjea, until the close of 1847. At that time, this hostility, in that particular relation of Mr. Hedger, ceased. Why did it cease? *Our* account is probable and consistent.—Ramapersaud Roy, who, though he was indicted together with the three defendants now before you, was discharged bythe Grand Jury, who, for some, to me inconceivable, reasons, as they found it against the others, threw out the bill as against him—is really, as to these things, a witness above all suspicion and imputation—why should such a man wilfully perjure himself? His statement is, that he, as a friend to all parties, suggested a compromise, and interested himself in effecting one between the litigants. *A priori*, how is that improbable or inconsistent? He *was* a friend to both parties—one of the legal advisers of Joygopaul Chatterjea, as well as occasionally of Mutty Loll Seal; and where is the improbability or inconsistency of his desiring to put an end to all disputes between them? He endeavored to bring about a settlement, and he tells you that he succeeded with the greatest difficulty. He tells you that so great was the dislike between Mr. Hedger, the attorney of Joygopaul Chatterjea, and Baboo Mutty Loll Seal, that they would not meet except upon neutral ground—viz., in the house of business of Oswald, Seal and Co., of which firm Mutty Loll Seal's son was the banian, and the operations of which were carried on mainly with Mutty Loll Seal's capital. After that, Mr. Hedger and Mutty Loll Seal may have met many times, and this negotiation, which had been pending from January, 1848, ripened into action on the 12th February of that year. There was no haste there.—Now, let us pause to consider what has been assigned, not by the profuse and exuberant *talk* of the Counsel for the prosecution, but by the *evidence*, as the motive for that oblivion of dislikes, and that reunion of temporary amicable relations between men, before so far asunder. Why, that Mr. Hedger meant to cheat Joygopaul Chatterjea out of 14,000 Rupees, and that part of the machinery was the giving him a promissory note for 8,500 Rupees! The fact, that a note for Rs. 8,500 was given by Mr Hedger to Joygopaul Chatterjea is incontestible. There has been some conflict of evidence as to whether the note was negotiable or not, but that is a perfectly immaterial and idle point; the non-negotiability is an alleged fact, dependent entirely on the statement of Joygopaul Chatterjea, and uncorroborated by anything that passed at the Bank. A reference to the terms of the mooktearnamah would at once make it evident, that the point raised

is really silly and beside the question, and one which could only succeed with a very ignorant Jury. If the mooktearnamah took effect, Mr. Hedger got the 14,000 Rupees, and was clearly able, if diligent, to do so in much less than a month. Then what did it signify to him whether Joygopaul Chatterjea realised the amount of the promissory note by discount or not? If the note were discountable, and in the hands of a third party, then Mr. Hedger would have retained the money required to pay it at due date out of the 14,000 odd he was to get under the mooktearnamah. He would not have paid to Joygopaul Chatterjea 8,500 Rupees until he got back the note, negotiable or not. He never did get back the note, or get any part of the 14,000 Rupees.—The pretended *argument*, therefore, is the most trumpery one that ever existed, and is quite beneath the level of the most ordinary understanding. I ask again what account has been given by the prosecution of this sudden re-knitting of relations so extremely hostile? Unless it be that which I have already indicated, they have professed to give none. They have, in fact, tacitly acknowledged their inability to give any. It may indeed be said, that it does not lie upon a prosecutor to supply motives :—that it is sufficient if he proves acts. Truly it may be so, if he proves reasonable and probable acts, emanating from probable and ordinary motives ; but here the question is, whether men, who cannot themselves account for an alleged act, itself extraordinary and unusual, are entitled to ask your belief in it without assigning and proving a probable cause? I tell you that the supposition that these two enemies became reconciled and conspired to cheat the client of Mr. Hedger, and hired at least five others—viz., Ramapersaud Roy, Surroopchunder Hazra, Kistnochunder Roy and Hurrochunder Sircar, to join in the conspiracy, is a proposition that affronts common sense. I have said that, if the story of the prosecution be true, this was a sprouting villainy, and that its root required a costly culture. Metaphor is sometimes apt to mislead, and I shall therefore explain what I mean by the phrase. The fraud upon Joygopaul Chatterjea could only be carried out by the agency of many other persons of various degrees, each of whom must either be a suborned perjurer to swear to the execution of the mooktearnamah, or a party cognizant of, and abetting, the crime and the criminals. Surroopchunder Hazra must have been a suborned perjurer, and Kistnochunder Roy a fraudulent agent. Then, how was the fraud to be carried out? Why, forsooth, through the medium of open formal and multiplied

proceedings and documents filed in Courts of Justice! Recollect the position of the money, and of the different parties. The thirty-six thousand rupees was tied up by three injunctions, and a "ruined zemindar" and a "big baboo and millionaire" were the contending parties. It is true that, according to their case, the ruined zemindar had a scintilla of chance of recovering a portion of this money. But I will show you that he had not in reality a particle of chance, and I challenge the Counsel for the prosecution to show any intelligible reason why the "big baboo and millionaire" should have loosed the hold which the three injunctions gave him upon the money, and dismissed three suits against the prosecutor, on the terms that each party should pay his own costs, when he was perfectly certain of recovering his costs in two of those suits, and in the third would have charged them on the estate of his testator, Sreenauth Mullick. I challenge him to show any reason which a man of common sense would expect a Jury of ordinary intelligence to hear without a smile at the miserable compliment to their understandings implied in its advancement.

That you may understand clearly and unmistakeably the history of the transactions in which the *mooktearnamah* originated, I shall go briefly through these suits, and explain how they stood at that time. The Exhibit D. (put in on behalf of the prosecution) is an agreement between Mohunchunder Burraul and Joygopaul Chatterjea, in 1831, at the time when Lot Porunbatty was sold for eight thousand and five hundred rupees at a Sheriff's sale, as the property of one Rammohun Banorjea, and was bought in by Tarrachund Chatterjea, *benamee*, in the name of Joygopaul Chatterjea, his son, to whom the Sheriff conveyed by the ordinary bill of sale, which, as you are aware, is only a conveyance of the right, title, and interest of the execution debtor, and no warrant of his having a good title. Rammohun Banorjea was not disposed, any more than other landholders in the Mofussil, whose properties are sold under writs of execution from this or any Court, to relax his hold of possession. The consequence was, that Tarrachand Chatterjea found he had purchased a law-suit instead of a talook. He was unable to carry on so expensive a litigation, and therefore entered into this agreement with Mohunchunder Burraul, which recites the circumstances I have just narrated, and by which Joygopaul Chatterjea sold the entire talook to Mohunchunder Burraul for Sicca Rs 9,700, Rs. 500 of which was to be paid, (and was paid,) on the date of the agreement, the balance, with interest at 3

per cent., to be deposited in the hands of a banker, *upon Joygopaul Chatterjea putting Mohunchunder Burraul into possession of the talook*—and not before. This is important; for Joygopaul Chatterjea, with, (as far as the manner was concerned,) a sort of half skill, half cunning, and entire impudence, has endeavoured to make out, in the teeth of legal reason and common sense, that he was released from that agreement because he had subsequently paid out of his own pocket from about a hundred to a couple of hundred rupees to get possession, and because the surplus of the purchase-money had never been deposited by Mohunchunder Burraul. It had not, indeed, been deposited, but the simple reason was, that Joygopaul Chatterjea had never given him possession of the estate. Mohunchunder Burraul supplied the funds for carrying on the suits against Rammohun Banerjea to the final decree, dismissing the appeal in the Sudder Dewanny Adawlut, and it is plain would, for his own interest, have supplied funds to get execution and possession if he had been applied to. For the rest, you have, on one side, the account of Joygopaul Chatterjea, that he was put to the expence of one hundred to two hundred rupees for costs to obtain and perfect execution, and further you have this most incredible statement, that Mohunchunder Burraul would not take out an execution in his (Joygopaul's) name, nor furnish funds for the purpose after having carried on at his (Burraul's) own cost, an expensive litigation from the year 1831 to the year 1835, for the sole end of getting possession. What earthly reason could any man, (not fit to live within the precincts of a mad-house,) possibly have to defeat his own hopes and efforts of years by just stopping short of fruition? But the fact is, that Joygopaul Chatterjea, environed with difficulties which *his* impudence even could not overcome or get rid of plausibly, has been confounding all time. He himself obtained possession in 1835; Mohunchunder Burraul filed his bill for a specific performance against him in 1837, but died a month afterwards. Then, if Joygopaul were willing to give possession, for what reason that ever operated on a sane mind, would Mohunchunder Burraul not have taken it? But he filed, instead, and because he could not get possession without, a bill in Chancery in this Court, which Joygopaul Chatterjea took six and a half years to answer, and which he then answered by an admission of the agreement, and a further admission of the supply by the plaintiff, of funds for the litigation with Rammohun Banerjea, taking, however, the signally silly point that he was relieved from the

contract, because Mohunchunder Burraul had failed to assist him with money in taking out execution. Supposing the net annual rents and profits to have been Rs. 3,000 or 5,000, (as Joygopaul himself has wished you to believe, rather than stated them to be,) he would have to account to Mohunchunder Burraul for every farthing of the money he collected during the period of 9½ years, while the estate was in his possession; Mohunchunder Burraul, on the other hand would be liable to him for only Rs. 9,200, with interest at 3 per cent. Taken in any possible way, Mohunchunder Burraul's claim would have amounted to more than Rs. 56,000 :—but reckoning the rental at less than half Joygopaul Chatterjea's figures, we make it Rs. 53,000 and upwards, on the assumption that the net rental was only 1,800 a year. Taking the rental at Rs. 5,000 per anuum, the claim of Mohunchunder Burraul would be above three-quarters of a lakh. In 1844, the matter stood thus. Mutty Loll Seal had no more to do with the suit instituted then by the representatives of Mohunchunder Burraul against Joygopaul Chatterjea than he had to do with the libel written by Dr. Newman against Dr. Achilli. The suit was then ripe to set down for hearing *on the pleadings without proof*—that is to say, enough of the plaintiff's case was confessed in the answer to his bill to enable Brijonauth Dutt and Omnapoorna Dossee, the executor and executrix of Mohunchunder Burraul, to obtain a decree for specific performance, and to compel Joygopaul Chatterjea to act in performance of the covenants on his part contained in the agreement. Instead of that, however, the plaintiffs, by some blunder either of their attorney, or their own, neglected their claim, and the bill was dismissed, with costs, not on the merits, but for want of due prosecution. Their claim was subsequently revived by one Ramchunder Chowdry, who purchased it for five thousand rupees, some time in 1845. A formal assignment under seal was given to Ramchunder, an instrument superior to all suspicion, and with which Mutty Loll Seal had nothing to do, he (Mutty Loll Seal) having no knowledge at that time of Ramchunder, nor, at that time, of the claim. The suit goes on—Ramchunder files another bill of supplement and revivor,—an irregular and erroneous one,—omitting all mention of the former dismissal of suit, though his was an attempt to continue that suit—gets an injunction long before Mutty Loll Seal acquires his right,—has the injunction afterwards dissolved, the bill dismissed, with costs, and the whole costs have to be paid by him to Joygopaul Chatterjea—thus far an eminently successful, as well

as knavish, litigant. Thus the matter stood until May, 1847, when Mutty Loll Seal who, as I think you know, is a wary and acute man—a man who pretty well understands a bargain, and extremely well the state of an account, but who is not an English lawyer, and, when meddling with his first mortgage, (as to which he ought to have taken more care,) found that he had placed himself in the wrong box, and that in reality when he took from Joygopaul Chatterjea's brothers the assignment of the mortgage by him to them of a three-fifth share in Lot Porunbatty, he took a title which was rotten, and over-ridden by a paramount claim in the Burraul suit, which, if properly conducted, made his own assigned mortgage not worth the peeling of a rotten apple. He soon, however, discovered, that if the suit of Mohunchunder Burraul were revived and properly conducted, it would over-ride the surplus proceeds in the Burdwan Collectorate after the sale. He therefore bought up the suit of Mohunchunder Burraul, and so fortified his bad security by a good one. He bought the dismissed law-suit for apparently a mere song—viz., 100 Rs.; but he had to pay, besides, to Mr. Peard, the attorney, costs due to him by Ramchunder, about Rs. 2,000 to 3,000 more. That was, no doubt, a price a good deal inferior to the value of the talook, but it was about as much, or nearly as much, as that he gave for the mortgage. The value of the talook, instead of being Rs. 38,000, was under Rs. 20,000; and in point of fact, whether by the employment of puffers, or by antagonistic and bonâ fide bidding, certain it is, it sold, when standing registered in Joygopaul Chatterjea's name, for much more than its real value; and in the precise extent that it exceeded its real value, was Joygopaul Chatterjea benefited. This at the time was the state of affairs of the claim in Mohunchunder Burraul's suit.

Now, as to the mortgage claim. It is perfectly certain that Mutty Loll Seal, (who is no more infallible than other men,—nor are his lawyers,)—did, through their errors and may be his own, get an irregular decree of foreclosure in March, 1847—irregular in this respect, that it merely contained an order that the Registrar should compute what was due to Mutty Loll Seal upon the deed and covenant—a one-sided account,—whereas, as he had been in possession about a year, there was a two-sided account to be rendered, for he was liable for rents as a set-off against revenue paid and interest. But who was the party that rectified the error of the legal proceedings of this Court, and avenged the injury (if injury there were) to Joygopaul Chatterjea? Why, it

was Mr. Hedger who set aside the order, referring the accounts to be taken by the Registrar instead of the Master :—It was Mr. Hedger who dissolved the injunction obtained by Mutty Loll Seal in that suit; and when another injunction was obtained on the bill of supplement, it was Mr. Hedger who reduced the amount of the mortgagee's claim on Lot Porunbatty to three-fifths : it was Mr. Hedger, in short, who contended every inch of all that ground for Joygopaul Chatterjea against his opponent, Mutty Loll Seal, with skilfulness, intelligence, and earnest zeal. You have heard a flourish about four letters of his, as if they were pregnant with proofs of dishonesty and fraud, and some incomprehensible allusion was made to Pandora's box in reference to them. Read them, and judge whether the contents are at all such as any but a mind warped and distorted by prejudice, could possibly have regarded as either direct or collateral evidence bearing upon this trial, as affecting Mr. Hedger's probity. The only comment I can make upon those letters is, that, if I could wish anything away from them, it is a certain suggestion in one letter to Joygopaul Chatterjea to take advantage of a technical defect in the legal proceedings of his opponent, Mutty Loll Seal—a rather dangerous suggestion to such a man as Joygopaul Chatterjea, and emanating from an over-zeal for his client and, it may be, from an under-current of hostility to Mutty Loll Seal. Did I belong to the other branch of the profession, which is equally honorable with my own, I think my knowledge of human nature would have led me to consider some of these suggestions as fraught with danger in their tendency. But do they show that, up to May, 1847, Mr. Hedger meditated a conspiracy with Mutty Loll Seal against Joygopaul Chatterjea? They show precisely the reverse. They show something of a hostile *animus* towards Mutty Loll Seal, something of a request to Joygopaul Chatterjea, to take time by the forelock and let slip no opportunity of proceeding against him, because the then present injunction once dissolved, the whole surplus proceeds of the talook after sale were free, and Joygopaul Chatterjea might take the whole out—for an injunction once dissolved could not soon be renewed. Yet Joygopaul Chatterjea was not entitled in any view to take out the whole.—To proceed : On the 31st December, 1847, after the error of the decree was rectified, the mortgage suit was again put in proper train, and again an injunction was issued which tied up three-fifths of the money in the Burdwan Collectorate. Then, Omnapoorna Dossee's suit was also put in train, and another in-

junction in it was issued, which stopped the whole five-fifths of that money. Then again, there was a third injunction from the Mofussil Court also attaching a portion of the money amounting to three-fifths. Suit No. 10 was going on in the Principal Sudder Ameen's Court, and was ultimately decided before the mooktearnamah in question was executed in favor of Mutty Loll Seal; and the very last letters to Surroopchunder Hazrah, admitted by the Counsel for the prosecution, speak of that suit as decided in favor of Mutty Loll Seal, and direct Surroopchunder Hazra to file his petition of appeal, notwithstanding pending negociations, because,—says the writer, Joygopaul Chatterjea,—"in any event I shall get back the value of the stamp." Who had the advantage in all these proceedings? With an impudence unparalleled in my experience of Hindu impudence, Joygopaul Chatterjea has repudiated what he stated in his deposition in Dwarkanauth Chatterjea's suit. He has stated that his wrath rose against Mr. Hedger for having lost him the costs in the suits of Mutty Loll Seal and the representatives of Mohunchunder Burraul. The whole of his evidence on this head was really an insolent affront to common sense. I asked him if he did not see an office copy of the orders dissolving and dismissing the bill and injunctions in both those suits, and whether Mr. Hedger did not give it to him, and he pretended that he did not know enough of legal proceedings in this Court to distinguish an office copy of an order from the original. And yet he is a man hacknied in litigation in both this and the Mofussil Courts, and endowed from early youth with an acuteness, a cunning, a skill, a tenacity of purpose, and a presence of mind, showing him to be no ordinary person—nay, a very extraordinary person, considered as an intellectual person, apart from honesty.—In every stage of these proceedings he has shown that he understood right well what he was about—that he had, in fact, been playing a game of double agencies, and making fools of all around—making Mr. Hedger a cat's paw to circumvent Surroopchunder Hazra,—mistrusting Surroopchunder Hazra,—and writing to the Collector a letter revoking his authority—of which he, Surroopchunder, could know nothing,—writing to Surroopchunder Hazra again about the same time, a letter full of directions about his own business, and getting Mr. Homfray, behind Mr. Hedger's back and unknown to him, to write another letter to the Collector, repudiating the mooktearnamah he had executed in Mr. Hedger's and Mutty Loll Seal's favor. Do you believe that he was so unacquainted with the effect of the practice and

decisions of this Court as ever to have thought that he could recover the costs of the two equity suits, one being a mortgage suit, the other a suit for specific performance, and both decreed against him? The direct evidence is already before you in the shape of depositions. The depositions of Mr. Hedger and Mr. Michael, three times repeated, are before you. Here and there, in Mr. Michael's testimony, you will find a discrepancy. On one occasion, he stated that Joygopaul Chatterjea went to the Police and acknowledged his signature before Major Birch. It turns out, however, from the attestation on the face of the mooktearnamah, that Mr. Michael himself went before Major Birch, and attested the signature. Without meaning any disrespect to Mr. Michael, I must state that he belongs to that class of men in this community, who sometimes acquire an imperfect knowledge of the English language without having acquired or retained a perfect knowledge of their own. But whatever the discrepancy may be, I make Mr. Peterson a present of it, and leave you to judge of the value of such an item in such a case.

Now, with regard to the indirect evidence,—is it not remarkable that two of the twenty-two letters should have been selected *by anticipation* by Mr. Peterson as evidence in his case? This seemed a very extraordinary course. At skittles, men—at nine-pins, boys—put them up for the purpose of bowling them down. But I never heard before, that, in a grave and solemn trial, the Counsel for the prosecution introduced as part of his *own* case documentary evidence which he supposed, but could not be sure, would be used by the defence, for the purpose of proving it to be a forgery by anticipation. I can understand the motive here, for this mode of proceeding. The motive is to take away beforehand the effect of the evidence if produced on behalf of the defence, as evidence unimpeached. You have seen what the opinions of *experts* on the hand-writing of the letters and of the mooktearnamah tend to. The letter (Exhibit B.,) one of the most important documents produced, was denied by Joygopaul Chatterjea, but was stated by the last witness to be in his (Joygopaul Chatterjea's) hand-writing. The letter, which is dated 14th February, 1848, runs as follows :—

"It is represented with the highest blessing that Srijut Mutty Loll Seal instituted a suit under No. 10 in the Sudder Ameen's Court and obtained a decree against me and other defendants. That, dissatisfied with that order, I and Dwarkanauth Chattopadhya have preferred an appeal, and that Srijut Baboo Mutty Loll Seal will file a dustburdary

or deed of relinquishment, stating therein to have received the money in full. This arrangement having been fixed upon here, the Seal Baboo has written a letter to Baboo Kistnochunder Roy, therefore I write to you that you will speak to the Roy Baboo and have the dustburdary put upon the file of the appeal proceedings without delay, stating the money to have been received by him in full, and when the Seal Baboo's dustburdary shall have been filed in the above proceedings, you will file a dustburdary on our part also; and you will present a petition to the Judge sahib, praying that the value of the stamp paper on which the petition of appeal is engrossed may be returned, when orders will be given for the restoration of the same. And so soon as a dustburdary shall have been filed on the part of the Seal Baboo, you will inform me of it and communicate to me all other occurrences as they take place. This is written for your information—the end year 1254, dated the 3rd Faulgoon."

You will see, from the preceding letters, which have been admitted, that a correspondence in a continuous and closely linked series was maintained between Joygopaul Chatterjea and Surroopchunder Hazra. You will then put your own construction on the English letter which Joygopaul Chatterjea instructed Mr. Hedger to write to the Burdwan Collector in May, 1847, relative to Surroopchunder Hazra. You will find from May, 1847, to February, 1848, letters written in a continuous series by Joygopaul Chatterjea to this very Surroopchunder Hazra, imposing upon him every duty of the most confidential nature with which a mooktear can be entrusted. It will be seen, most clearly from the above, that the prosecutor is a man who takes care to have two strings to his bow; for at the same time that he was urging on an appeal in a certain case in one letter, he was saying in another that that appeal was not necessary, and in a third that it would not do harm. One of the letters I have referred to—the letter of 8th February, 1848—and which Joygopaul admits, mentions the very compromise embodied in the mooktearnamah in these terms:—"*A negociation for a settlement with Srijut Mutty Loll Seal is going on, but it has not as yet been concluded.* I imagine, however, that a settlement will be effected; but it rests on the will of Providence. The Seal Baboo has said to Mr. Hedger, 'I will not quarrel with the Chattopadhya Mohoshaye. You will interpose between us, and bring the matter to a termination.' When the settlement is effected, I will write to you."—It may be said

that no such settlement as is mentioned here was ever effected, because Joygopaul Chatterjea did not write to Surroopchunder Hazra again. But, I leave it to you, as men of sense and judgment, to say, whether it is likely that, even if the settlement were not effected, he would leave the matter where it remained by his first letter, or whether he would not write that the contemplated arrangement had *failed*. According to the case for the prosecution, the correspondence concludes with the letter from which I have just read. If this is so, it breaks off with most unaccountable and suspicious abruptness. According to our case, the letter (Exhibit C.,) which Joygopaul Chatterjea repudiates, states *that a settlement had been effected.* It also contains a great deal of matter which a client at a distance would write to his confidential mooktear, and, therefore, though it has no immediate connexion with the case, it of itself negatives the assumption that the letter was forged. The letter (Exhibit B.) though denied by Joygopaul Chatterjea, has been proved by his own vakeel and witness, Mahomed Ali. It also bears the post-mark, as do all the other letters, except C. The absence of the post-mark in C. is their battle-horse as to that letter. As far as I have seen of post-marks here, I should say it would be a far easier achievement for a man to fabricate counterfeit marks like those, than for the most accomplished forger to commit a double forgery in imitating the hand-writing of one man (Joygopaul Chatterjea) throughout the body of a Bengali letter of that length, and imitating the hand-writing of another (Dwarkanauth Chatterjea) in the postscript appended thereto. You will bear in mind, that that man, Joygopaul Chatterjea, unparalleled for acuteness and calm audacity, denied the whole of this file of letters in the court of the Principal Sudder Ameen, and has attempted *here* to explain away that falsehood by stating that he gave the denial *there* because he was not upon oath. The letter C. which does not bear the post mark, yet contains the postscript of Dwarkanauth Chatterjea, in which is collateral matter that would never have entered the mind of an ordinary forger to introduce, and if it did, would certainly have struck him as calculated to make the forgery more difficult. Mr. Peterson has made it a point that the letter is not signed. If, however, the body of the letter is in Joygopaul Chatterjea's hand-writing, that is authority sufficient. A Bengali signature, besides, is not always written at the foot of a letter, but may be written at full length in the body, or laterally in the margin, and that would be sufficient. If letter C. is a forgery and a full

signature at the foot was necessary, then I apprehend a forger would see that its omission would defeat his object, and he would write it out at the bottom in full. The letter C. bears no post-mark ; and that is explained by the fact, which we shall prove, that it was received by Surroopchunder Hazra from a private hand.

This, I need not say, is a case by no means suggestive of mirth, but some of these two-and-twenty letters are not without amusement, and you will hardly forbear a smile when you hear the following :—

In a letter to Suroopchunder Hazra, Joygapaul Chatterjea, after speaking of his disputes with Mutty Loll Seal, says, "If the Seal Baboo did not do something which he wished him to, then would he (the Seal Baboo) *have to endure from him a sweet squeeze!*"

But why am I reading these letters ?—to show, from the internal evidence they contain, that the letter C., which alludes to several of the matters mentioned in these, cannot be a forgery, for I deny that the thought would have entered the mind of any forger, however artful, of making the numerous references which appear in C., to a variety of minor and unimportant instructions and statements in particular letters of a long anterior date.

Let me pause here, and comment on a good deal of the avalanche of rubbish with which this case has been encumbered by the Counsel for the prosecution. He has produced a bill of costs by Mr. Hedger against Joygopaul Chatterjea which has been taxed, and of which taxation Joygopaul Chatterjea must have had notice,—and has wished you to infer that it contains items which have been improperly charged. Mr. Hedger brought an action on that taxed bill in this Court, and recovered judgment. Evidence has been given by Mr. Peterson in his speech—for there really is no other—that Joygopaul Chatterjea was unable to defend that action. Why could he not defend it as well as he can prosecute this indictment, and prove (what he now alleges) that there were sums due to him from Mr. Hedger for which no credit had been given him ? Mr. Peterson's argument appears to me to destroy itself. The learned gentleman did not disdain to sneer at the array of Counsel which he had to oppose. Mutty Loll Seal is represented by three Counsel, Mr. Hedger and Mr. Michael, only by two,—the broken-down and ruined Zemindar, who had parted with every farthing he had in the world, is still represented by three. Assuming that the services of the leading Counsel

are unfed, surely such aid given would have been as usefully, as honestly, and as gracefully rendered to the ruined man in a money demand, as in a criminal prosecution.

Mr. Ritchie appears on behalf of Mr. Hedger, a gentleman whom I have known as a friend for the last eight-and-twenty years. Mr. Hedger's case presents some shades of difference, to which his learned Counsel will draw your attention. I will not, therefore, further dwell on the points of the case which concern Mr. Hedger, nor on the internal evidence disclosed in this file of letters, of Joygopaul Chatterjea's unwearying hostility to Mutty Loll Seal, of his friendship to Suroopchunder Hazra, his natural acuteness and subtlety, his double-dealing and vindictiveness, his power to avenge his own wrong, and his readiness to assail another's right by means of wrong. Has any rational explanation been given why Mr. Hedger should have committed that most infamous of villainies—that deepest of wrongs—the betrayal of his client into the hands of his worst enemy, and the colluding with that enemy to cheat and denude him of every thing he had in the world? Has any rational explanation been given why this man, at no other time slow to obtain redress, did not, on this occasion, at once assert his own right and the dignity of public justice?—why this man, Joygopaul Chatterjea, did not at once enforce atonement, by the vengeance (if I may use the term—but it is erroneous) by the retribution of justice, for the enormous wrong that he alleges had been inflicted upon him? From February, 1848, the date of this mooktearnamah, until the last indictment preferred against him in April of this year, he did nothing—he did not even take the obvious course of moving in Chambers to have Mr. Hedger struck off the rolls—a course easy, cheap and efficient, if his case were true. His Lordship will, probably, tell you, whether, had he done this—had he placed upon record by affidavit one-half the allegations which he makes in this case, Mr. Hedger would not have been promptly called upon to answer them, and whether, if necessary, an issue would not have been directed to try the case. That would have been a cheap form of punishing such knavery and obtaining redress. It would have required little professional aid—it would scarcely have needed the assistance of an attorney. An attorney's clerk might have framed the affidavit, as many an attorney's clerk does, independent of his employer. Nothing of this sort did he do. Yet, was he silent? Has he not been engaged in active litigation ever since? He

commenced a series of expensive legal proceedings. He filed his own bill and the other to which he made himself a defendant, and carried on two Chancery suits: and it was not until he was called upon to put in his answer to the bill filed by Dwarkanauth Chatterjea, (in reality his own bill,) and give his evidence in that, suit on the equity side of this Court, that he once ventured to charge misconduct against Mr. Hedger upon oath. The reason is natural and obvious. No man likes to plunge into perjury at once. He denied the *mooktearnamah* before the Collector—but *not upon oath*: he denied his letters before the Principal Sudder Ameen—but, again, *not upon oath.* It was only in his answer to the bill of Dwarkanauth Chatterjea, when he could not avoid repeating his former statements, and when his conscience, such as it was, had been prepared for the effort, that he committed himself upon oath. I cannot be answered by the pretence that he had conscientious objections to an indictment. He had already indicted Brijonauth Dutt, because Brijonauth Dutt, as executor of Mohunchunder Burraul, had taken, a part against him in filing a bill: he had, moreover, threatened to indict Mutty Loll Seal for having given, as he said, "bad advice" in that same suit. You see, then, the character of the man you have to deal with. I ask you to dissect the documentary evidence, the vivâ voce depositions, the evidence of the experts—and to say what testimony you have to counteract that of Mr. Hedger and Mr. Michael, except the word of that man? I ask you what evidence you have to support the whole case, except the evidence of that man? I have bent the whole force of my mind to show that independently of direct evidence, the probabilities of the case destroy the prosecution—the station of the defendants—their means—their reputation—the enormity of the villainy imputed to them—the inadequacy of the consideration for perpetrating it—and the almost certainty from the publicity of the means employed of detection and exposure.

Satisfied that you are well aware of the responsibility devolved upon you, I take leave of my case. It is one in which, although the defendants have been placed in a position painful, distressing, humiliating—yet I can say that it is with sincere and unfeigned pleasure,—since tried they must be, and have been,—that I see the hour of fair and impartial trial at length arrived. Flattery you would disdain to receive, as much as I to use. I flatter you not when I say I believe *you* capable of doing that impartial justice which

you have been sworn to administer: I flatter you not when I say I believe you to possess both the intelligence,—here much required,—and the wish to do that impartial justice which this case also demands. Justice, in its fulness and perfection, belongs but to One, and, in that sense, includes every attribute of our Maker, except His omnipotence. In the degree in which Man, frail and fallible, can make an approach to the ministering of perfect justice—in the same degree does he make a more near approach to the majesty of his origin, and the more brightly and gloriously is the divine image of his Maker revealed within him, and made manifest in his actions.—To your justice I commit this case, undoubting of the result.

Mr. Ritchie now addressed the Jury on behalf of Mr. Hedger and Mr. Michael, as follows:—

GENTLEMEN OF THE JURY,—It is now my duty to address you on behalf of the defendants, Mr. W. N. Hedger and Mr. J. C. Michael. A more anxious duty never fell to my lot, and I did not think it possible that in a case in which the life of my client was not at stake, the anxiety and sense of responsibility under which I laboured, should weigh so heavily on me as it does at this moment. One of the men I represent is not only a client, but a friend:—a man from whom I have, in the professional intercourse of years, received almost daily marks of confidence and good-will:—a man, whose confidence and good-will I prize at least as highly now, in this his hour of trial and peril, as I did in his most prosperous days, when first he became my client. No wonder then that I feel anxious, lest that confidence should prove misplaced on this occasion, so momentous, so all-important to him. No wonder that my anxiety to discharge my duty properly should disqualify me for its effective performance, conscious as I am of my own lamentable deficiency in the burning eloquence, the power of clear and vivid expression with which my friend who has just addressed you (Mr. Dickens) is so eminently gifted, and in which he has this day almost surpassed himself. But there are other considerations which may well cause uneasiness. An appeal has been made to prejudices and feelings, ever misplaced in a Court of Justice, against the men who ask for nothing at your hands but a fair trial and an impartial hearing. If the prejudices appealed to had been those of low or ignoble minds, I should

have scorned to give them even passing notice; but they are those to which honorable and upright minds have been subject: those commonly called *honest* prejudices, against which it most behoves the honest mind to stand upon its guard.

This has been represented as the cause of the poor against the rich—of the oppressed and betrayed against the oppressor and betrayer—of the worm turning on the foot that crushed it; and the Nemesis of retributive justice has been invoked upon the heads of these men against whom it has been said the "tables are now turned." Nay, it has been said—not indeed, in terms, by my learned friend Mr. Peterson within, but by the Press without, these walls,—that the very Court, to which the meanest criminals are entitled to look to hold the scales of justice even, is bound "gracefully to yield" to the verdict of two independent Juries already so unmistakeably pronounced! This and much more has been said. But I know that those whom I address are above all such considerations, however plausibly insinuated, or however honestly enforced. I know that you would shrink as from a crime at the bare thought of sacrificing at the shrine of the most honest prejudice, the most natural feelings, a fellow-creature, whether your countryman or not, whether rich or poor, against the weight of the evidence, against the light and dictates of reason applied to that evidence. I know that you would think, as I think, that the "graceful submission" referred to, would "be disgraceful prostitution;" cowardly infamous abandonment of the most solemn and exalted privilege with which man can be invested in a free country, the right of judging for himself of the guilt or innocence of his fellow-man.

I now turn from this subject, to which I should not have alluded, had it not formed the main source of anxiety to my clients in this case, (an anxiety which, while my reason condemns, natural feeling will not let me quite suppress,) I now turn to that which forms the only real question for you to-day, the guilt or innocence of the defendants as manifested by the evidence, and the evidence alone. Turning to this, I feel here no anxiety, no uncertainty, no wavering. I feel nothing but the most unshaken confidence in the innocence of my clients, in the irresistible force of truth which must bring home to your minds that innocence, and the utter incredibility of the case for the prosecution.

What is that case? You are asked to brand as a conspirator the member of an honorable profession, who, in the

exercise of that profession for more than thirty years, had won the confidence of numerous clients of his brothers of the profession—of the successive Judges before whom he practised from this to the last generation. Did I say you are called on to brand him as a conspirator? He is denounced as a forger, a perjurer, a traitor of the blackest dye, of the most infamous hue. His conspiracy is said to have been not for, but against, his client: his perjury, not to defend, but to convict, his client: his forgery that of the name which, to an attorney, should be most sacred from all tampering, the name of his own client. Now, whatever may be the faults or crimes of the members of the profession of the law, I believe the very rarest of all is that of betraying the client to his adversary in a pending litigation. There are of course bad men in all professions; and I do not say that there have not been too many instances, though I trust rarer now than formerly, in which an artful attorney has taken foul advantage of his client to enrich himself at his expence. But I do say that the annals of jurisprudence will scarcely produce an instance of an attorney in the height of litigation openly and shamelessly betraying his client to his opponent; sacrificing him not for his own sake, but for that of his opponent. There is good reason for this. The bare suspicion of having done so would be sufficient to ruin the business of an attorney in the highest practice, and he would be sure to lose more in his general practice than he could gain in the particular case. As the rarest crime, so also is it the blackest, and followed by the severest punishment, as is well known to every attorney. Mr. Hedger knew as well as you, or I, or the Judges on the Bench, that forgery or perjury subjected him to transportation, while conspiracy and fraud on the client, would subject him to imprisonment for years, and to be struck off the rolls with ignominy; in his case, tantamount to a sentence of starvation.

It is to be supposed, then, that if he, knowing all this, did resort to such nefarious and infamous practices, so fraught with danger and ruin if detected and so certain of detection if committed, he must have had some strong adequate and all-absorbing motive to outweigh, not merely the dictates of conscience (if he had any, which Mr. Peterson seems to deny), but of the commonest prudence. He, in the height of his practice—a lucrative one—who had up to that time, beyond all question, zealously, skilfully and manfully conducted the case of Joygopaul Chatterjea, is represented as suddenly abandoning him, as handing him over, bound hand and foot,

to his ruthless adversary, and of resorting, without attempt at concealment, to a most infamous forgery, to rob that client of all he possessed.

Surely, surely a man in that position would not have committed such a crime, in such a manner, without some strong motive. And what is the motive imputed? Why, to get possession of a portion of the fund, sufficient to cover little more than one-half of the amount due to him from his client at the time! How stood the accounts between them? Joygopaul Chatterjea owed him Co.'s Rs. 10,607, partly for costs, partly for hard cash lent, and Mr. Hedger had recovered judgment for the full amount. Under the mooktearnamah, Mr. Hedger was to receive the remaining two-fifths of the funds in the Collector's hands, amounting to Co.'s Rs. 14,500: his being the proper hand to receive it on account of Joygopaul Chatterjea, his client, in whose name it stood; and he was out of that to keep Co.'s Rs. 6,000, or a few rupees less, and to hand over the residue, Co.'s Rs. 8,500, to his client, Joygopaul Chatterjea, thus taking in lieu of the 10,600 odd Rupees due to him, the 6,000 Rupees in round numbers which he was willing to accept. He never pretended to be entitled on his own account to a farthing more. What he was to gain then by this unexampled forgery and fraud, was a sum of money to nearly twice the amount of which he would have been entitled if none such had been committed, and which represented his out-of-pocket costs, and cash actually advanced by him without interest. It is not pretended that he ever received one farthing from Mutty Loll Seal—both have been examined at enormous length on every subject which the fertile ingenuity of my friend could suggest: not a question was put to either, whether Mr. Hedger was to receive a farthing beyond the sum of which he was actually out of pocket.

Now, my learned friend (who has answered by anticipation many arguments that we did *not* intend to use, and has taken great pains to demolish a defence which we *never* dreamt of making) has told you, that you would hear a great deal from us about the respectability of the parties, and the consequent improbability of their committing a crime, and has said truly that, in a Court of Justice, all men are equal, and that the law knows no distinctions of respectability, I admit that wealth and respectability are no sure guarantee against the commission of crime, and that a rich man *equally tempted* is not less likely to commit one than a poor man. But the man in easy circumstances is less likely to commit a

heinous crime, subjecting him to severe punishment, than the needy one, simply because he is less exposed to the temptation, and has infinitely more to lose and less to gain by it.

Now as to this, I meet my friend on his own ground. Say, for the sake of argument, that Mr. Hedger had only the *seeming* respectability that Mr. Peterson imputes to him : say that he was the hollow hypocrite, the whitened sepulchre, my friend assumes him, I still put this question to your candour and common sense. Would a professional man in good practice, to whom his reputation for supporting the interest of his client in Court was as the very breath of his nostrils—whose practice was sure to wither away under the very suspicion of having deliberately betrayed his client—assuming him to be ever so void of honorable principle, and ever so great a rogue at heart—would such a man, rashly, wantonly, and madly risk his practice, his reputation, his all, by committing such a crime as this, without some strong paramount consideration of self-interest, outweighing all others? Would he do it, without a clear well-defined prospect of certain gain to himself? Would he do it—I may almost ask—for anything short of some such princely largess as would remove him from the necessity of plodding on laboriously in a city in which he would be ever liable to trial, and a fearful punishment, and in a Court in which he would be thenceforth practising with a halter round his neck? Yet it is not pretended that Mr. Hedger suddenly acquired any large accession of wealth or accession of practice through the aid of his co-conspirators—one thing is certain that he continues to practise here laboriously even to the present hour (and long may he continue to do so, through the result of your verdict to-day) and that among his numerous clients he has never reckoned, for an hour, Mutty Loll Seal or any one connected with him.

There is no visible sign, therefore, of motive on his part for committing this forgery and betraying his client : there is every possible motive for his not doing so, and yet you are asked either to believe that he committed a crime most improbable in itself, under circumstances certain to lead to his detection without the slightest attempt at concealment, without any conceivable motive ; or you are asked to infer generally that there must have been some motive because there is proof of the crime. But you will remember that my learned friend told you over and over again, that the probabilities arising from the strong *motive* the parties had to commit this forgery were so cogent, that he could almost dispense with

any positive evidence, and that at all events they gave the strongest confirmation to the prosecutor's evidence; arguing correctly (if his premises were true) that those who are largely to benefit by a crime, were the persons most likely to commit it. Now that the motives which formed his premises are displaced, will he tell you that it is not for the prosecutor to show the motive, that it is sufficient for him to prove, positively, the crime, and that, doubtless, there must have been some unknown motive for it, as crimes are not committed without motive? This is the logic of the prosecutor. First you are asked from the existence of the motive, which is assumed, to give credit to the positive evidence of the crime; and then from the positive evidence of the crime to believe the existence of the motive.

If we turn to Mr. Michael, the absence of all possible motive for the imputed crime is at least equally striking. He was the mere clerk of Mr. Hedger, and had nothing whatever to gain, but all to lose by lending himself to such an offence. My friend seemed to argue, as if, on entering into articles with an attorney, a clerk was entering into a compact with Satan, and that he becomes bound thenceforth to commit any crimes that his bad master might suggest. I apprehend an attorney's clerk (even though he might not scruple at a trick of sharp practice) would be as little disposed to subject himself gratuitously to transportation at his employer's bidding as any one of us. Even if it could be credited that Michael had a hand in the forgery and knew of the machination that was going on, it is most improbable that he would stand forward as the attesting witness; especially as another man, Hurrochunder Sircar, was the attesting witness of the first instrument, and there was no need to implicate himself in order to secure the success of his forgery. Men do not unnecessarily multiply the instruments of their crimes or the proofs against themselves. The native writer must already, on the hypothesis for the prosecution, have lent himself to the first forgery: why select another now, more easily identified with Mr. Hedger, as witness to the second? I may here state once for all that I shall not attempt to sever the two cases of Hedger and of Michael. It is possible that nice distinctions might be made between them, but I have not applied my mind to find them out: and fully admit that if Hedger the attorney is guilty, then is also Michael the clerk; if the clerk is guilty, then also is the master, either both are guilty or both are innocent.

We start, then, with the allegations, on one side, of a

crime of almost unexampled infamy committed without attempt at concealment—committed, not in furtherance of, but against, the interests of Mr. Hedger, and without any motive on the part of any of the defendants that a reasonable or candid mind can for an instant admit as adequate.

Gentlemen, I will now advert to some specific charges made by Mr. Peterson against Mr. Hedger in alleged connexion with the case. In doing so, I must necessarily comment, and strongly, on the malice and falsehood which prompted the prosecutor to instruct his Counsel to make such charges. In that Counsel's speech, there was much to provoke retort, sarcasm, refutation. I shall endeavour as much as possible to avoid the use of these weapons, however tempting the opportunity to employ them. I know that you will not be affected by them, and I may truly say to my friend (whose zeal I respect, though his mode of applying it as Counsel for the prosecution in this case I deplore)—

> "'Tis not the trial of a woman's war,
> The bitter clamour of two eager tongues
> Can arbitrate this cause between us twain."

But with reference to the cruel utterly unfounded imputation cast by him on Mr. Hedger, I must also be permitted to add with banished Mowbray—

> "Yet can I not of such tame patience boast
> As to stand mute : and nought at all to say."

The first of these imputations is, that Mr. Hedger, in May and July, 1847, long before the quarrel, wrote four letters to his client. My friend says these letters were found at the bottom of a Pandora's box of Joygopaul's. The meaning of the allusion I was at a loss, with Mr. Dickens, to discover, till it flashed across me that he must have meant it hypothetically, somewhat thus : that whereas Pandora's box had nothing left in it but Hope, Joygppaul's *case* had no hope left in it, save in these four letters.—And slender indeed is the hope they afford it. What they show is this—that at that time, Mr. Hedger was most zealously, actively and keenly discharging the duty he owed to Joygopaul Chatterjea. They further show what is an important circumstance of the defendant's case—that even at that time, it was con templated that the money with the collection when recovered should pass through Mr. Hedger's hands. Further there is an allusion which shows that in July, 1847, Joygopaul

Chatterjea must have been informed that Mutty Loll Seal had then some interest in the Burraul suit, though he denied he had any till after February, 1848. Why, then, were they produced, utterly useless as they were as evidence for the prosecution?—Why, for the sole purpose of prejudicing Mr. Hedger, not so much in your eyes, as in those of the Court, by showing that, through his client, Mr. Hedger had committed what might be construed into a contempt of the injunction of the Court tying up the money in the Collector's hands. After having got rid of two injunctions, Mr. Hedger became apprized of an application for a third one, and immediately sent to Joygopaul Chatterjea to tell him he had not a minute to lose in applying for the money. The Court might say that Mr. Hedger, as one of its attornies, had no right to disregard its injunction, whether regularly obtained or formally served or not; though I am sure that they will say that, under such circumstances, any over-zealous expression in these letters which I may regret, was only natural and deserved no real censure. But did such a complaint lie in the lips of the prosecutor? With what grace did it come from him? I will venture to say this is the first time that a client ever came forward in a Court of justice to complain of his attorney having, in communications of the most confidential kind, gone to the very limits of his duty in a zealous endeavour to further that client's interests! The production of these letters for so crooked and indirect a purpose well accords with the character of the prosecutor, on whose head it recoils.

Then Mr. Peterson preferred a charge, not only against Mr. Hedger, but against his own client, of having, years before, conspired to cheat some honest creditors of Joygopaul Chatterjea of the fruits of a *boná fide* judgment against him, by concocting a fraudulent bond and judgment given by Joygopaul Chatterjea to Mr. Hedger for Co.'s Rs. 1,000, to secure the latter's property from execution. Mark again the malice of the prosecutor. He introduces a charge, having no possible connexion with this case against Mr. Hedger, equally damaging, if true, to his own character as to Mr. Hedger, for the sole purpose of prejudicing the latter. Of this charge, there is not a particle of evidence. The man himself in the box did not venture to tell you this preposterous story of the bond having been given for a fraudulent consideration: the bond clearly was given for full consideration, being money advanced by Mr. Hedger, which, I admit—for

he would scorn to palter with the truth—was afterwards repaid, and the bond was given up. Then it is said a fraudulent use was made of that judgment by issuing execution on it after the bond was given up. But what was the fact? When Mr. Hedger learnt that Joygopaul Chatterjea had gone to Burdwan for the purpose of getting this money from the Collector, he immediately arranged to start himself for that place to prevent him; but fearing, lest by any accident, he should himself arrive too late, or his personal representations not prove effectual, he gave notice to the sheriff to attach the money under the judgment which he still held for the Co's Rs. 1,000, not for an instant intending to enforce that judgment, but merely to make the notice available as a temporary, and certainly a prudent and perfectly justifiable expedient, to stay the fraudulent withdrawal of the money. This Mr. Hedger was bound to do by all means in his power: having pledged himself to Mutty Loll Seal that his client should compromise on these terms, and having then procured a dismissal of the suit, it was imperative on him to take every step within his reach to stop the fraud,—and who can say that he was not fully justified in making this use of the judgment?

Then it is said that in stipulating for payment, either of the whole or part, from the surplus proceeds, Mr. Hedger was securing to himself payment of a fund which he knew did not belong to Joygopaul Chatterjea to give, inasmuch as one-fifth of the surplus proceeds belonged beneficially to Petumber Chatterjea who had purchased from Beressur Chatterjea, and one-fifth to Dwarkanauth Chatterjea, Joygopaul Chatterjea's brother.

First.—As to Petumber Chatterjea. He was Joygopaul Chatterjea's eldest son, and Mr. Hedger has always stated that the purchase of that share in his name in 1847, when he was a mere boy of sixteen or seventeen, was *benamee* on his father Joygopaul Chatterjea's account, and that Joygopaul Chatterjea was the real purchaser. All the probabilities show that such was the case, and support the positive evidence on oath of Mr. Hedger and Mr. Michael. Petumber Chatterjea was a mere lad, living with his father, without any occupation or means of his own at the time, and as Mr. Peterson has said himself, nothing was more usual in this family than for the father to purchase land *benamee* in the name of his son. Tarrachand Chatterjea had purchased this talook originally *benamee* in the name of his eldest son, Joygopaul Chatterjea: what more probable than that Joygopaul Chatterjea

should purchase this fifth in the name of *his* eldest son, Petumber Chatterjea? Joygopaul Chatterjea was engaged in litigation which he knew to be doubtful, if not desperate. What more natural than that he should not wish his own name to appear as purchaser, and in whose name was it more natural to make the purchase than in that of his eldest son? As the father had done with the son, so might the son in his turn be expected to do with *his* son in this family of Brahmins. The prosecutor has had notice for years that such was Mr. Hedger's assertion; the young man himself, who alone is able to prove the truth of the story, as Mr. Hedger's and Mr. Michael's lips are now sealed, has been in Court during the whole trial, actively assisting his father: and yet he has not ventured to call him, because he knew that the son must either admit the *benamee* nature of the purchase, or must subject himself to the penalties of perjury. Indeed, the only redeeming feature in the character of this prosecutor, so versed in fraud, seems to be his reluctance to plunge his son into the same abyss of perjury in which he is himself so deeply steeped. One cannot help feeling glad of the forbearance, while at the same time the non-production for such a reason of such an all-important witness, speaks volumes for the falsehood of the father's own statement. We of course shall not be so cruel as to subject this unfortunate son, whose devotedness to his father has something affecting in it, and moves one's pity, to the temptation of perjury, which the father, hardened as he is himself, shrunk from exposing him to. This share then being really Joygopaul Chatterjea's, and being in excess of the Rs. 6,000 which Mr. Hedger was himself to receive, of course the objection of Mr. Hedger's receiving payment out of that share fell to the ground.

As to the other share, that of Dwarkanauth Chatterjea, Mr. Hedger never for an instant denied that he knew of his interest, small as it was, by reason of the Burraul claim; but what then? Mr. Hedger and Mr. Michael have all along stated on oath that Dwarkanauth was privy and consenting to the compromise (though he of course left all the management to Joygopaul Chatterjea) which was strongly for his interest, as it seemed to him, subject to what arrangement he might enter into with Joygopaul Chatterjea as to his portion of the proceeds to which he could not otherwise have been entitled. Has Dwarkanauth been called to deny his knowledge? He is Joygopaul Chatterjea's own brother, and, doubtless, would have been produced could he have disproved Mr. Hedger's statement of his knowledge.

But again, if we assume that his assent was not given, it was utterly unnecessary. Joygopaul Chatterjea, the recorded proprietor, is the only person who could be entitled to receive Dwarkanauth Chatterjea's share, and account to him for it. Mr. Hedger, as the confidential attorney of the recorded proprietor, was the proper hand to receive the whole of the proceeds not made over to Mutty Loll Seal, and would then be bound to hand over to Joygopaul Chatterjea the surplus, after satisfying himself out of Joygopaul Chatterjea's own share in the sum of Rs. 6,000. The Rs. 8,500, a sum considerably larger than Dwarkanauth Chatterjea's share, would properly be handed over to Joygopaul Chatterjea, who would have to account with Dwarkanauth Chatterjea for his portion out of that amount.

[*The Chief Justice.*—Of course, if your object is to relieve Mr. Hedger from specific imputations made upon him in the opening speech, you are quite justified in so doing, but the charges you have been alluding to, cannot be used by the prosecutor in aid of the present indictment, inasmuch as the charge is not that of defrauding either Dwarkanauth Chatterjea or Petumber Chatterjea, but Joygopaul Chatterjea.]

Were this a common case, and were I merely struggling for an acquittal, I should tell the Jury, as I know your Lordships would be bound to do, that these charges, introduced not for the purpose of supporting the prosecutor's case, but of prejudicing the defendants' gratuitously, deserved and should receive no answer. But every transaction of Mr. Hedger's life for years, which the malice of the prosecutor could rip up, has been laid bare by him, not for the purpose, it is true, of supporting fairly the charge in the indictment, but for that of blackening his character not only in this city, but through India, and as far as the report of this trial is circulated. Mr. Hedger shrinks not from the inquiry, wide-spread as it is. He is ready to explain, and is, I hope, through me, explaining to the satisfaction of every candid mind, every particle of conduct in which he has been attacked; and, hard indeed would be his condition if his advocate was precluded from refuting to the utmost of his reasoning powers, and branding with the whole force of his indignation, the cruel and wanton attacks made upon him, simply because their falsehood is only equalled by their irrelevancy!

Let me here point out another instance of the uncandid nature of the attack made on Mr. Hedger. Mr. Peterson admitted that in Mr. Hedger's evidence the same contradic-

tions do not occur as he imputes to the other witnesses ; but he says that, on the first trial, there is a statement of Mr. Hedger so utterly false as to damn the whole. And he read the passage in which Mr. Hedger says in the report :—

"*I did not know that Joygopaul Chatterjea's brother was interested.*"—Mr. Peterson reads that as if it is a denial of Mr. Hedger's knowledge that any of Joygopaul Chatterjea's brothers had ever any interest *in the talook* Lot Porunbatty, and he says (and truly) that Mr. Hedger having been throughout the attorney, knew as well the title of the talook and its proceeds as Joygopaul Chatterjea himself, and that he had all along so deposed on former occasions. But why did Mr. Peterson stop short in reading the report of Mr. Hedger's statement ? Interested—in what ? My friend would have you infer that he meant in the whole talook, or its proceeds. I think you will be surprised when you hear from the continuation of the passage what Mr. Hedger was speaking of and being examined to. It continues thus:—" I was disposing of what I believed to be Joygopaul Chatterjea's interest, I understood Dwarkanauth Chatterjea, Joygopaul Chatterjea's brother, was entitled to one-fifth, but that there was an arrangement as to paying that out of the amount of my note (*i. e.*, the Rs. 8,500) Joygopaul Chatterjea purchased Beressur's share of the talook. He bought it in Petumber Chatterjea's name." So that Mr. Hedger does in the very same breath disclose his knowledge of Dwarkanauth Chatterjea's interest in the surplus proceeds and of Joygopaul Chatterjea's interest in Petumber Chatterjea's share ; while the interest of the other brother had long before been parted with. What therefore Mr. Hedger was speaking of when so examined was not the surplus proceeds generally, but that portion which, as he says, he was disposing of absolutely away from Joygopaul Chatterjea'— *i. e.*, the share in Petumber Chatterjea's name, out of which he was to get the Rs. 6,000 ; while Dwarkanauth Chatterjea was to get his admitted share from Joygopaul Chatterjea : and yet the learned Counsel would have you believe, that Mr. Hedger, by the deposition, wholly ignored the claim of Dwarkanauth Chatterjea, the brother ! This is the fair criticism to which the evidence of any one of you, honestly and conscientiously given, may, many months afterwards, be subjected, by a desperate attempt to torture half a sentence in it to a different meaning from that which the plain context gives !

Then my learned friend has ventured to say that the greater part of the bills of costs, which Mr. Hedger includes in the

claim which he says was settled for Co's Rs. 6,000, were not incurred till *after* the date of the alleged settlement, and would have you, therefore, believe, these claims could not have been then compromised. There is, I believe, one trifling item of two or three hundred Rupees included in the subsequent action brought, although Joygopaul Chatterjea had repudiated the compromise, but this would only show that Mr. Hedger's claim was less then by one or two hundred Rupees than it became afterwards. But if the claim is looked to, it will be found to have been all substantially due at the time, and none of the items, save the trifling one referred to, accrued afterwards. One thing, however, is certain, and even my friend cannot deny, that whatever be the exact amount of the claim, it considerably exceeded Co.'s Rs. 6,000, the amount Mr. Hedger was to take, and considering the enormous amount of litigation and the large number of bills in which Mr. Hedger had, for four or five years, been engaged as Joygopaul Chatterjea's attorney, my astonishment is, that the amount of these costs is so moderate. I see it with pleasure, as it appears to me creditable, both to the Court in which, and the attorney by whom, the business was conducted. Mr. Hedger, too, had obtained judgment from this Court for the full amount of his claim, Co.'s Rs. 10,600, when all the items were proved, although the cause came on *ex-parte* : and Joygopaul Chatterjea, if there was any real objection to any of the items, would, doubtless, have defended the action. The zeal shown now by my friend for his client would have been at least as well displayed in defending the civil action, if there were a shadow of ground for objection to Mr. Hedger's claim, and there is no lack of able and honorable men at the Bar, ever ready to undertake without fee or reward, the poor man's case, when once convinced that it is based on truth and justice.

Again, my friend, instructed by his client, has inveighed against the want of proper feeling exhibited by Mr. Hedger in keeping the unfortunate man in jail upon a detainer issued in the judgment for this very sum, notwithstanding the alleged compromise! You will here also be surprised to learn that the charge is made without a particle of truth. Mr. Hedger has never issued execution against the person of Joygopaul Chatterjea upon that judgment; and Joygopaul Chatterjea has been in custody upon an attachment for non-payment of the costs of a harassing bill in equity which he filed against Mr. Hedger, causing Mr. Hedger considerable expence in commencing it, and which he then dropped, leaving

Mr. Hedger, though successful, to bear his own costs. And the man has remained in prison of his own will by reason of his refusal to do that which no honest man could hesitate about—viz., to produce his books and deliver them to the Assignee. Some of you may think that imprisonment for debt is a relic of barbarous times, and should be abolished; but I think you will agree that if ever there was an instance where its application is fair and deserved, this is one.

Let us now look closely at the relative position of the parties at the date of the mooktearnamah, in order to weigh the probabilities as to such a compromise having been entered into, and as to its having been a fair and favorable one for Joygopaul Chatterjea. An internecine war of litigation had been going on for years between Joygopaul Chatterjea and Mutty Loll Seal, as well as the Burrauls and others. My friend attempts to excite compassion for the man as the victim of law. But who was to blame for it? It was all of his own seeking. It was not Mr. Hedger or Mutty Loll Seal who plunged him into this vortex. The letters which he now admits, paint to the life the man in vivid colours, revelling and exulting in every shift and turn of the legal game. Why, he portrays himself in these letters as a very creature of litigation, and shows that he is "native here and to the manner born." Legal finesse and chicanery were to him as the very breath of his nostrils; he seems to have imbibed their spirit with his mother's milk, and the atmosphere in which he breathed most freely was that (so hateful to most men, and certainly so to us all, this night) of a Law Court. Now until shortly before the settlement, Mr. Hedger had most zealously and skilfully conducted his business in the Court, and had for some time proved himself more than a match for his opponent. Every advantage that the complicated forms of our Court (more complicated then than, I am happy to say, they now are) afforded, had been resorted to on behalf of Joygopaul Chatterjea. Many a time had Mutty Loll Seal met with a check or a defeat, but each time he had again rallied and returned to the contest. Notwithstanding all the blunders committed both in the mortgage and the Burraul suits, they had, at last, all been corrected by Mutty Loll Seal, doubtless, under sound and skilful advice; and the contest was at that time rapidly drawing to a close, the only issue of which must have been utter and irreparable ruin to Joygopaul Chatterjea. The Burraul's claim (the connexion of Mutty Loll Seal with which at the time had been boldly denied, but which will be now proved by unimpeachable

evidence which my friend will not venture to gainsay) was ripe for hearing: the bill was taken as confessed in December and in the February term Mutty Loll Seal was in a condition to obtain a decree in it, which, whatever computation as to interest was adopted, must have swept away the whole of the Rs. 36,000 in the Collector's hands, including the share of all the descendants of Tarrachund Chatterjea, the father. Mr. Peterson has ventured to say that there was a good defence to that suit; and to support that position, he is obliged to resort to a legal construction of that agreement (the fact of which he could not deny, as his client had, by his answer, admitted his own and his father's signature) which no lawyer, or man of sense, though not a lawyer, could tolerate—which I felt ashamed to hear a lawyer propose. Here is the agreement stating in plain unmistakeable terms, admitting of no escape "that, until possession of the talook be given to Burraul, the purchaser, he is to pay only 3 per cent. interest on the residue of the purchase-money, Rs. 9,200; and that upon possession being given—and mind, *not till then*—the Burrauls are to deposit the principal, while the Chatterjeas are to account for the mesne profits. Possession never was given by the seller, though the Burrauls had, for years, been sueing for it, and therefore the time had not arrived for their depositing the purchase-money; and yet my friend attempts to show that the non-payment of the purchase-money revoked the agreement. The delay is completely explained—1st, by Joygopaul Chatterjea's not getting possession himself till 1839, immediately upon which the bill was filed; 2ndly, by the death of Mohunchunder Burraul, the plaintiff, a fortnight after the bill was filed; 3rdly, by the blunder evidently committed by his executors, when they did endeavour to revive that suit; and by the desperate efforts by which Joygopaul Chatterjea resisted it. Mutty Loll Seal, the determined opponent of Joygopaul Chatterjea, in the other suits, had bought up this claim, doubtless to fortify his title in those other suits, and doubtless, also, for a comparatively small sum, the sellers of it having been disheartened by the ill success which, through a series of blunders, had attended them up to that time.

But Mr. Hedger knew full well, that whatever was the motive of Mutty Loll Seal in making the purchase, and however small the sum paid, the legal right of Mutty Loll Seal was the same, and that by virtue of these rights, Mutty Loll Seal was entitled to sweep away in these suits every far-

thing of this fund which my friend has told you was the last remnant of his client's property. Mr. Hedger knew too, that even if the most favorable mode of computation of the purchase-money was adopted, allowing interest from the date of the purchase, and setting off against it only six years' mesne profits (which, however, would have been far too low a computation), nothing could have been left to Joygopaul Chatterjea, save at the utmost some small sum of 1 or 2,000 Rupees, after satisfying the Burraul's claim—that even *that* would have been subject to be swallowed up by Mutty Loll Seal's mortgage claims, which are admitted to have exceeded Co.'s Rs. 6,500. Well, then, what was Mr. Hedger's duty to his client, Joygopaul Chatterjea, when he saw this almost certain ruin impending on him, and when he found the last resource that legal ingenuity could devise to defeat the claim had been tried in vain? Was it, as my friend would have it, to encourage this man to expend his last rupee in litigation, notwithstanding the certainty of the result? Whom would such a proceeding have benefited? Why, Mr. Hedger, and him alone; and even if fresh blunders were made in the suits, their only effect would be to postpone for a short time the evil day, and to put costs into the pocket of the attornies. I say, that under the circumstances, it was a sacred duty for Mr. Hedger, as Joygopaul Chatterjea's attorney, to endeavour to compromise the suits on *any* fair terms; and that if Mr. Hedger, having an opportunity of settling these suits in terms so favorable for his client, whereby his opponent gave up two-fifths of a fund whereof he could have got the whole, had failed to advise and urge, nay, to compel his client to accede to it,—then, then indeed, would he have betrayed his duty to his client and deserved to be struck off the rolls with disgrace. It is not the attorney who compromises a desperate suit for his client, who is a disgrace to his profession—it is the man who, when no real hope exists, still buoys up the client with false hopes, and continues in litigation after he knows that it must be fruitless to his client—profitable only to himself. There is not a more solemn part of the duties of an attorney than that of advising, urging, nay compelling, with all his moral weight, his client to compromise a doubtful litigation when a fair offer of it occurs. And right glad am I to think that, in the present day, that part of an attorney's duties is so faithfully performed by all really respectable practitioners, and that their deterring clients from useless litigation, so far from prejudicing them even in pocket, tends to place them

in fortune, as in reputation, far above the pettifogger who is only bent on gain, and who encourages his client to spend his last shilling!—thus affording another illustration of the homely truth that meets one at every turn in life, that Honesty is the best policy. Mr. Hedger's duty then was clear—his client's interest was clear—to effect such compromise as we say was actually effected. And the client must have been a madman—the attorney a rogue—to reject such a compromise if feasible.

But it is said the instrument by which the particular compromise was effected is a suspicious one, because it purports to give the remaining two-thirds after paying Mutty Loll Seal, not to Joygopaul Chatterjea, but to Mr. Hedger. Had it professed to dispose absolutely of the whole two-fifths to Mr. Hedger as his own right out and out, as it does of the three-fifths to Mutty Loll Seal, there might be something in that argument. But look at the instrument itself. While it expressly recites the agreement with Mutty Loll Seal that he is to have three-fifths absolutely, and after directing Kistnochunder Roy to pay them to him, it expressly says, "*because it is his right*"—showing that he was to receive it out and out for himself. It omits any such expression as to Mr. Hedger, merely saying, "*You will pay the surplus to Mr. Hedger*" (who is described as his attorney) "*on his receipt.*" But this is the very language which would have been used if the money was merely to be paid over to Mr. Hedger as attorney for Joygopaul Chatterjea, and, consequently, as the proper hand to receive it, subject to any arrangement that might be made between them as to payment out of it of his costs, and that is the view with which we say it was given. Therefore the internal evidence of the document itself, to which my friend appeals, so far from being inconsistent with our account, fortifies and supports it.

Now look at the conduct of the parties after the execution of the first mooktearnamah, and see whether it is that of conspirators or forgers. It is sent to Burdwan, presented there, and sent back for some trifling informality. If the second mooktearnamah was a forgery, of course the first must have been one also. But the parties must have well known that the circumstance of the first having been sent to Burdwan and returned, might and probably would, get to the ears of Joygopaul Chatterjea, and expose them to detection; and yet so hardened are they in guilt, so callous to consequences, as to forge on the 19th a second instrument of the same kind, notwithstanding the additional fear of detection

which the failure of the first supplied. What would you have expected them to do next, had they really forged the document under such circumstances? Surely to send it up to Burdwan at once, to dissolve the injunction, and free the fund without an hour's unnecessary delay. After the failure of the first, and its communication at Burdwan, every day's delay, of course, increased the chance of detection to a fearful degree. Joygopaul Chatterjea, who had plenty of agents and correspondents at Burdwan, (as the letter expressly testifies) might any day have discovered the attempted filing of the first, and have anticipated that of the second, and then the whole plot would have been blown into the air. But what is the fact? The second mooktearnamah is executed on the 19th February, yet these forgers do not transmit it to Burdwan *till the* 10*th*, and do not dissolve the injunction so as to clear the fund to make it available *till the* 11*th* of March! They let pass twenty whole days, whereas, if a forgery, their interests required they should not lose an hour! If honest men, who had just entered into a compromise, this was just what you would expect; for on the supposition that all parties are acting in good faith, there would be no need for any particular hurry; and the delay of twenty days was not unreasonable, while, on the supposition of a forgery, every day's delay involved detection and defeat. Again, on the 11th March, the injunctions in both suits are dissolved, and both bills dismissed by consent, by the same order. Now, if these men were committing a fraud, as supposed, would they have been so rash or blind to their own interest, as to dismiss these suits? The dissolution of the injunctions was a necessary step to enable them to get the money; but the injunction might have been dissolved, leaving the suits themselves where they were; so that, in case of the fraud not being successful, they would have, at all events, the suits in which Mutty Loll Seal's claims were just and honest, and certain to be established, to fall back upon. Has my friend, Mr. Peterson, attempted to give you any explanation as to how those suits could have been dismissed consistently with his hypothesis of fraud? The suits comprised large claims to which Joygopaul Chatterjea had no possible defence. The prosecutor's theory is, that the alleged compromise of these suits is altogether a fiction, and that the injunction was dissolved upon a pretended consent for the mere purpose of getting the fund out of the Collector's hand. And yet we find the parties dismissing the suits altogether, and thus, for the sake of a mere hazardous expedient to get a smaller sum, parting for

ever with the easy remedy they had in their hands, for compelling payment of a far larger one!

Mr. Hedger's conduct, too, from the first moment of his hearing of Joygopaul Chatterjea's repudiation, is quite inconsistent with the notion of a forgery. Up to that time there was nothing (if Joygopaul Chatterjea's story be true) to show that Mr. Hedger had any connection whatever with the forged mooktearnamah: the object of the forgery was defeated by the discovery. Mr. Hedger, therefore, had every motive to conceal his connection with the nefarious scheme, but instead of that, he comes forward boldly and openly, first by the letter of 16th March, the very moment he knew of Joygopaul Chatterjea's repudiation, and then personally at Burdwan, before the Collector, on the 20th, declaring the mooktearnamah to have been executed in his presence. Does that look like the conduct of a forger whose scheme had failed, and who had not been detected, but whose crime, if he had kept silent, need not have been traced to him?

Again, if the acquisition of the money behind Joygopaul Chatterjea's back had been the object, where was the necessity of resorting to this dangerous and complicated scheme of fraud and forgery? The same end might have been effected simply by all parties letting the law take its course in the Burraul suits. Mr. Hedger had nothing to do but to let Mutty Loll Seal take his decree for specific performance in the Burraul suits in the February term, and dissolve his own injunctions in all the suits. The suit was ripe for decree, and that decree once obtained, no kind of complaint could have been made by Joygopaul Chatterjea. Having admitted the agreement, and having no real defence in the Burraul suits, he could not have sworn to merits to entitle him to set aside even the order, still less the decree *pro confesso*. Now, though Mr. Peterson has, from his copious vocabulary, applied many choice epithets to these parties, he has not accused Mr. Hedger of being precisely a fool or destitute of ordinary intelligence; and yet he must have been so, if instead of adopting the simple obvious means to which the law itself entitled him, and which he could have incurred no human blame for using, (making his own arrangement with Mutty Loll Seal) he resorted to this complicated scheme, exposing him to such fearful consequences. To my mind, this consideration alone would be sufficient to dispose of the whole case.

I now turn to Joygopaul Chatterjea's proceedings, to see whether they are consistent with his story. He tells you,

that on the 13th March, he, for the first time, learnt from Mr. Hedger that Mutty Loll Seal had settled the mortgage suits and had dismissed his bill without costs ; and that the Burraul suit was also dismissed in pursuance, as he *now* says, of previous instructions given by him to Mr. Hedger under a compromise he had himself effected with the Burrauls. What should we expect to be the conduct of a man who suddenly found himself relieved of the vast responsibilities involved in these suits, who could get nothing from their continuance, but ruin ? Would he not have been all gratitude, all joy, at the welcome tidings ? But Joygopaul Chatterjea tells you that he was in such distress of mind and disgust with Mr. Hedger on hearing of the dismissal, that when he received the still more distressing letter from Burdwan about the mooktearnamah, that same afternoon, he would not even go back to him for an explanation, but went off straight to another attorney. He has the matchless effrontery to say that he expected to have got his costs, and thought the mortgage suit against himself would result in a large sum due to him as compensation for the sale of the talook, forsooth, (the talook having sold for considerably more than its real value !), and that as to the Burrauls, he had already settled with them ! Look at the utter absurdity of his story about that settlement. He had shortly before indicted Brijonath Dutt, Burraul's executor—and who had been acquitted. The whole interest of the Burrauls had been assigned months before to Mutty Loll Seal, which he knew in July, or at least in October, as appears from one of Mr. Hedger's and one of his own letters at these dates ; and yet he pretends that he entered, without the knowledge either of his own attorney, or of the attorney in the suits of Mutty Loll Seal, into a compromise, whereby the suit, taken *pro confesso*, and ripe for a decree as it was, was actually dismissed without costs and without consideration ! Full of that craft which stamps the worst of his race, he at once sees the effect of the question put to him as to the date of his having first heard of the assignments of the Burraul claim to Mutty Loll Seal, and struggles hard to avoid answering them. He effects at one time, humour, at another, tears. At last, after many an evasion, he makes up his mind to say that he never heard of them till after the dismissal of the bill ! Then, when his own admitted letter is shown him, wherein he, in October, 1847, in allusion to the Burraul suits, threatens to indict Mutty Loll Seal for subornation of perjury in that very suit (in which he obviously treated him as the party

on whose behalf the Burraul executors had filed the affidavit for the injunction,) and pressed with the dilemma in which it involved him, he tells you, that he, at the time, did not believe Mutty Loll Seal had any connexion with those suits, but he had intended to prefer an indictment against him, in a suit with which he had no connexion, in order to sustain his influence at Burdwan, and show that he was not a man to be trifled with! Observe the characteristic cunning of the man. Being obliged to admit one or the other, he prefers admitting that he intended falsely to indict a man whom he believed to be a total stranger to the suits, to admitting that he knew of Mutty Loll Seal's interest in these suits when he wrote that letter, though it is clear, both from that and Mr. Hedger's letters, that he *must* have known of it before. But the latter admission would have destroyed the case he came prepared to make:—the former would only destroy his character, and proclaim his infamy; and after pondering some time over the two alternatives, he deliberately adopts the latter, as involving in his opinion the lesser evil! And this is the broken-down, broken-hearted zemindar, on whose behalf such sympathy has been invoked!

He now, for the first time, tells us, that he managed the compromise of the Burraul suits, and instructed Mr. Hedger to conduct the dismissal of the bills. He then also, by his Counsel, urges that it is improbable that Mr. Hedger should compromise his mortgage suits with Mutty Loll Seal without any writing except the mooktearnamah, and says, with the same breath, that the representatives of the Burrauls agreed to give up all claim whatever against him without any consideration at all, and without a scrap of paper, save the consent order.

I may here notice a circumstance much dwelt on by my learned friend, as evidencing what he called the one-sided nature of this agreement. He said, that if any such compromise had really existed, it would have been evidenced by other writings than the mooktearnamah and agreement, that there would have been a release from Mutty Loll Seal, a return of the title-deeds, a cancellation of the mortgage-deed, containing the covenant, on which my friend says, Joygopaul Chatterjea still remained liable to Mutty Loll Seal. Now this is one of the most whimsical complaints ever heard, coming, as it does, from a man who admits having done everything in his power to repudiate the compromise the instant the parties began to carry it into effect, and who, if these steps were necessary for his interests, has himself prevented

their performance. How could there have been a release from Mutty Loll Seal till the money was received;—why should the mortgage-deed have been cancelled and the title-deeds given up, until Joygopaul Chatterjea's part of the agreement had been performed? As the result shows, the parties were too rash in taking even the steps that they did, to carry out the compromise, and in dismissing the bills in their reliance on Joygopaul Chatterjea's good faith. The mooktearnamah itself, when once adopted and acted on by Mutty Loll Seal, by his receiving the money under it, and the order dismissing the bills by consent, would have as effectually bound Mutty Loll Seal as the most formal document signed by himself—the covenant in the mortgage-deed could never after have been put in force: the title-deeds had, by the sale of the land long since, become mere waste paper. But even if further formal documents should have been properly given, who prevented the execution? Was it not Joygopaul Chatterjea himself, who, the instant the first preliminary steps were taken, which cleared the fund, repudiated the mooktearnamah altogether? Mutty Loll Seal has even submitted to be bound by the terms of the mooktearnamah, as has Mr. Hedger, and the only party who has ever pretended that its terms were not binding on him, is Joygopaul Chatterjea, who repudiated its very execution the instant he had himself got the full benefit of it—by the dismissal of the suits, but *not till then.* Can he now come forward with brazen face to complain that its terms were not sufficiently binding on the other parties—a circumstance, for which, if it existed, he would only have himself to thank?

But the evidence of this man, wretched as it is, literally teems with corroborations of the defendants' case in some important points. Observe what he admits, that Mr. Hedger had, for some time, urged him to compromise Mutty Loll Seal's claim;—that he, Joygopaul Chatterjea, himself gave express instructions for the dismissal of the Burraul suit without costs;—that he did not require any writing for that compromise, save the consent order dismissing the bills;—that he was at Mr. Hedger's office on the 12th February, the date on which he is said to have executed the first mooktearnamah;—that he did give a promissory note for the amount mentioned by Mr. Hedger. It is true he puts a gloss upon these facts, but if that gloss is an utterly incredible one, as I think we have shown, how important the corroboration becomes! Suppose, instead of coming from Joygopaul Chatterjea himself, they had come from independent

witnesses: suppose one of you had happened to go into Mr. Hedger's office, early in 1848, and had heard him urging Joygopaul Chatterjea to settle with Mutty Loll Seal: suppose another had heard Joygopaul Chatterjea give instructions to dismiss the Burraul suit without costs, and that another had been at that office on the 12th February, and had then seen a promissory note for the amount in question, how valuable would such corroboration, if necessary, be deemed! And yet, are they less so, because they are wrung from an adversary, though accompanied with an explanation of them at which reason revolts?

I now turn to certain collateral matters imported into the case for the prosecution, which are *not necessary* for the case for the defence, but which, if our view of them is correct, utterly destroy the whole case for the prosecution. One of them is the promissory note for Rs. 8,500. The point raised by Mr. Peterson is this—he undertakes to show the note was negotiable, whereas Mr. Hedger, Mr. Michael, and Ramapersaud Roy have said it was not. Now, observe, that even if the forgery was committed, it was utterly unnecessary for their case to describe this note otherwise than as it really was. There is no dispute whatever, that a note for that amount between these parties *was* given on that day, but the suggestion is, that we are availing ourselves of a real fact to give a color to a false story. But when men do this, they do not destroy the only value of that fact as a corroboration by unnecessarily overloading with falsehood. It would be just as consistent with the exigency of the defendant's case that that note should have been negotiable as not; the case being, that it was given to Joygopaul Chatterjea to secure him his share of the proceeds when received first by Kistnochunder Roy, and then by Mr. Hedger, and a note payable to order being just as good for that purpose as a non-negotiable one. Why then should they cut from under them the support that the admitted existence of such a note gave them, by introducing in its description a gratuitous falsehood capable of detection? The probabilities, therefore, strongly preponderate, that if the parties are cunning enough to avail themselves of a real note to support a false case, they will describe it accurately, and will not vitiate it altogether by a misdescription. Mr. Peterson has undertaken to prove that this note was payable "to order"—but in attempting to prove that and damage his opponent, he has proved another fact which damages his own far more strongly. He produces an entry

of the 15th February, in the Bank of Bengal books, by which it appears the note was presented for discount by Joygopaul Chatterjea on that day and refused, and he thence infers, it must have been payable to order, or it would not otherwise have passed the Dewan's hand or got into that book. This is by no means certain. Dewans, book-keepers, and secretaries are not always infallible. If a heap of bills are offered for discount at the same time, it may well escape attention that one of them is not payable to order, until it came actually to be circulated for discount, or discounted. Had this note been actually discounted, that would have been a different thing, for men look at a note with a clearer eye before they actually pay money on it, than when they merely look at it for a preliminary purpose. For this purpose, therefore, the entry seems quite inconclusive, and even if it did appear that it was payable to order, it would make no material difference, as either the words "or order" may have been added during the interval between the 12th and 15th of February, or it may have been made payable to order by mistake, although the parties, knowing that it was otherwise agreed, may have wrongly taken it for granted that the note, when written, corresponded with the agreement. I don't say that either of these hypotheses, which are merely conjectural, is correct; but I do say that if the note was payable to *order*, they are far more probable than the hypothesis suggested on the other side. But there is another, and far more important view in which that entry may be regarded. My friend has dared to invoke the sacred name of Providence respecting its discovery, which he called a "Providential arrangement." He truly called it so; but he did not perceive that by these very means was Providence affording additional detection of his client's falsehood. Before that entry was discovered, Joygopaul Chatterjea, in his deposition in this Court, said, that he merely endorsed the note at Mr. Hedger's request and gave it back immediately to Mr. Hedger, (*i. e.*, on the 12th, the day of its date,) for *him* to discount for his own purposes. How does he reconcile that with the entries subsequently discovered, which show that three days after it was given, it was taken to the Bank of Bangal for discount, not by Mr. Hedger, but by Joygopaul Chatterjea himself as discounter, and received back again by him for Mr. Hedger. He now, after the discovery, adopts the fact, and for the purpose of showing a contradiction to Mr. Hedger's story, which would be of no real importance if made out,—he alters the whole tenor of his evidence from that which he had originally given.

To us, the entry is most important as showing that such a note was given on the day of the first mooktearnamah—whether payable to order or not is immaterial, except so far as it tests the accuracy of my client's recollection, in which he is fully corroborated by Ramapersaud Roy, who could have no earthly motive for misrepresenting the character of the note agreed on—while he and my clients, if conspirators, would have the strongest interest in describing the note as it really was, in order to corroborate each other.

Then look at the series of letters from Joygopaul Chatterjea to Surroopchunder Hazra, beginning with 8th May, 1847, and ending 25th February, 1848. Of these, all are now admitted except the last two, although you will remember that the unwilling admission was at last wrung from Joygopaul Chatterjea that he had originally denied either having written or sent *any one* of the whole two-and-twenty at the Sudder Ameen's Court, and you will not forget his demeanour when pressed as to that denial. He still denies the last two letters, being the only two *after* the date of the mooktearnamah, and therefore, I suppose he thought them the only two sufficiently important to deny. But he, in spite of all his craft, has overlooked the fact that the admitted letter of the 8th February,* written just before the mooktearnamah, is quite as fatal to his case as either of those written afterwards. For it refers distinctly to a compromise then pending between him and Mutty Loll Seal through Mr. Hedger, for the success of which he, Joygopaul Chatterjea, was most anxious, while his statement to-day was that, so far from his being connected with any compromise with Mutty Loll Seal, he expressly forbade his attorney to accept the only one suggested, and denied all knowledge that any was going on. With regard to the other letters, I shall not go over the ground already so ably occupied by Mr. Dickens; but I must observe, that so far from there being any complicity between Surroopchunder Hazra and my clients, with reference to the letters, Mr. Hedger never had any communication whatever with Surroopchunder Hazra, and never heard of these letters until during the trial of the indictments in April last. As to the two indictments for perjury, neither Mr. Hedger nor Mr. Michael was the prosecutor: they were both mere witnesses. It would not become me to express an opinion as to the judiciousness of the second indictment, or the correctness of the opinion

* See note p. 48.

of the Jury who tried it. The very fact known appears to me to show that the prosecutor must have had an honest conviction of the truth of the charge. For if not, and if he had, by successful villainy, wrung from this poor broken-hearted zemindar all that he had in the world, why prosecute him further—why drive so dangerous a man from whom he had nothing to gain, to desperation, by successive persecution—why provoke further inquiry in a matter which it was his interest to suppress? I repeat, however, that Mr. Hedger was not the prosecutor of either of the indictments, and that he has had no opportunity, publicly, to vindicate his character from the cruel attacks to which it has been subjected.

Then my friend dwelt at length on the alleged discrepancies in the evidence of the witnesses in the former indictments, and said that they were of themselves sufficient to show the whole case was a fabrication. He broached on this subject a doctrine which I have never heard from any lips but his own; which I regretted to hear from any man of sense—and which, if true, would render the Court of Justice in which it was permitted to prevail, a mockery, a bye-word, nay, a very nuisance. It was this—that discrepancies in the testimony of witnesses on any point, however trifling, in an important case like this, renders their whole evidence unworthy of credit,—and he anticipates an objection,—that discrepancies in trifles rather tended to show the honesty of the case,—by saying over and over again, that in such an important case as this, there are no such things as trifles, everything here was important. I had always understood that in the well-known words of a celebrated writer—substantial truth amidst circumstantial variety was the true character of human evidence, and that there could not be a more rash or unphilosophical conduct of the understanding, than to reject the whole of a story, because some of the circumstances attending it are contradictory. It is said the case is an important one, and that witnesses did not forget the circumstances attending a transaction of importance to hemselves. But when did it first become important to the *witnesses?* Would they attach any particular importance to it until *after* Joygopaul had repudiated the *mooktearnamah?* Assuming their account to be correct, and the compromise genuine, it was as much a matter of every-day occurrence to each of the witnesses engaged as any that can be imagined; and it would be most strange and suspicious if they could remember even a few days, not to say months and years afterwards, all the circumstances, the non-recollection or misrecollection of which moves my friend's indignation.

Assuming these transactions genuine, what earthly motive had Michael, the attorney's clerk, part of whose almost daily duty it was to attend the Police Office for such purposes, for recollecting whether, when his client went with him there, the actual acknowledgment of it was made by the client or himself? What reason had Mr. Hedger or Ramapersaud Roy, who were daily in the habit of seeing the preparation or execution of similar documents, for recollecting all minutiæ about the return of the first or the execution of the second *mooktearnamah*, or about the particular hand to which the document was handed, on which so much stress is laid? What wonder that there should be some trifling variety in their recollection on such points as these? It would have been either miraculous, or ground for grave suspicion if there was none. Which two of us would agree as to the petty details of an every-day occurrence passing before us without any thought at the time that such occurrence would afterwards assume an unexpected importance?

But mark this, gentlemen. If the mooktearnamah was a forgery—if Hedger, Ramapersaud Roy and Michael were, for the first time in their lives, engaged in so infamous, so perilous a crime—then, then indeed would every circumstance attending its preparation, execution, attestation, have an importance in their eyes at the time which would rivet itself, firmly as adamant, in the mind. Then, then indeed would every minute detail remain engraved in the memory until their dying hour—then, then we should have found no discrepancy in these details which would then have been no longer every-day trifles, but so many land-marks indicating their first entrance into the path of crime! All would then have been consistent, for the motive of consistency and accuracy would then have been strong and present at the time itself to each mind. How idle, therefore, is it, when the fact is admitted that the particular document was acknowledged at the Police—and the only question is, whether Joygopaul Chatterjea was there,—to waste our hours in inquiring in what particular form, or by whom acknowledgment was made, (it being certain that if Joygopaul Chatterjea had not been there, Michael would have taken care to make his evidence consistent with the written memorandum, and would not then have forgotten a circumstance relating to it;) or in enquiring whether the mooktearnamah was returned by Ramapersaud Roy to Mutty Loll Seal or Mr. Hedger, when it is certain that, in some mode or other, both mooktearnamahs,

were prepared and executed, and that, if forgeries (and only in that case) the witnesses would have had too strong a motive to close observation to admit of forgetfulness or contradiction.

Gentlemen, I believe I have now gone through all the material points either in the opening speech or in the evidence you have heard against my clients. If I have left any unnoticed, it must be attributed to the lateness of the hour, and the anxiety to hurry on and release you as soon as possible from the painful task of listening to me. I have exhausted myself, and feel that I must also have exhausted you. But let it not be said hereafter, that Mr. Hedger has shrunk from any charge or imputation, however irrelevant, that has been advanced against him, either by Counsel or in evidence. Heavy and numerous were those brought against him by both. Plain and satisfactory is the answer which he is, in my humble judgment, able to give to one and all. I believe that I have met all those that required an answer, and if I have omitted any, the fault is mine, for, assuredly, there is no point of the case he is not well able to meet.

Before concluding, I would note the palpable logical fallacy that pervades the whole of my friend's reasoning, and apparently his thoughts with reference to this case. He starts with an assumption of the forgery of the mooktearnamah ; and from these premises, he disputes the statement of the defendants and the witnesses, showing incontestably, that on his assumption of the forgery, their conduct has been inconsistent in the extreme. He does not look boldly in the face the possibility of the mooktearnamah being genuine, and show that the premises on which we rely, are insufficient to support *that* conclusion. Now, it has been said of the Holy Bible itself, that where a man starts by assuming the falsity of its conclusion, no wonder that he finds its premises a fragmentary chaos of inconsistency. We ask you not to adopt any such one-sided, vicious process of reasoning. We ask you not to begin, by assuming the genuineness of the mooktearnamah, but to weigh carefully and deliberately all the premises, and see whether they do not lead naturally and logically to the conclusion that some such instrument as that was executed at the time. Then, and not till then, assuming the execution of the mooktearnamah as proved by the statements of five persons,—analyze it, and see whether there is anything whatever in the surrounding circumstances which may not be fairly and naturally reconciled with that conclusion.

Weigh well the probabilities of the case. Forget not that these men had nothing to gain, but everything to lose by the supposed perjury; while the prosecutor had much to gain by getting rid, for the time at least, of these suits, and by securing to himself the entire funds (in which case, we should probably have heard no more of him or it); and nothing to lose, supposing him to be the man he paints himself in his letters. And then say, upon the whole case, whether with reference to the relative position and character of the parties at this time, it was more probable that a real compromise was entered into at that time, whereby Mutty Loll Seal, in consideration of an immediate stop to litigation, should consent to give up a large portion of his claim under the Burraul suits, and to take the entire three-fifths of the proceeds which he had been entitled to, had the foreclosure decree stood, and whereby Mr. Hedger was to take a sum considerably less than his bill of costs then due,— or that these defendants, together with Ramapersaud Roy and numerous others, who must have been the instruments more or less guilty of the scheme, should forge a document purporting that such a compromise was made, contrary to their own interest, and to the advantage of no one but Joygopaul Chatterjea himself?

With these observations, gentlemen, I leave the case of my clients in your hands, in the fullest confidence that you will deal out to them that justice which we should one and all wish for if we stood in their present painful position, and that you will do this, uninfluenced by any consideration on earth save that of the evidence alone. If you do this, they are secure of a full and honorable acquittal, which I trust I shall soon have the heartfelt satisfaction of hearing from your lips. In that hope, and in no unmanly or unworthy spirit, but sustained by the consciousness of his own integrity, Mr. Hedger confides to you his honor,—his professional reputation,—his liberty—his livelihood,— his all,—all that makes life worth having—all that he has to hope for on this side of the grave. I thank you, gentlemen, from my heart, for the kind attention with which you have listened to me. I feel that I should apologize for the length of my address—perhaps, I should do so also for my warmth and vehemence. But it has been the warmth of sincerity and truth; the vehemence of one who feels he is pleading a righteous cause, the cause of innocent men! That cause is not theirs alone :— it is my own,—it is that of my brethren around me,—it is yours;—it is that of every honest man whose lot is cast as one of labor in this land of

perjury and fraud, and who is exposed to the misfortune of having for his client or constituent, a plausible, but deep, artful, and measureless villain.

Thursday, 26th August.

The following witnesses were examined for the defence:—

PHILIP PEARD.—I am an attorney of this Court. I was attorney in the Burraul suit, and caused the dismissal of the bill upon instructions received. Brijonauth Dutt was the executor of Mohunchunder Burraul, who assigned the claim Mohun had in Lot Porunbatty to Ramchunder Chowdry. I was originally attorney to Burraul, who died fifteen days after the first suit was filed. Then I acted for the executors and Unnapoorna Dossee. I know of the assignment of their interest. I prepared the deed. The consideration was acknowledged—Rs. 5,000. But the money was not paid in my presence. At the time of the filing of the last bill, I was aware of the assignment of Mutty Loll Seal of this last interest. I became acquainted with it about the time of the filing of the second suit. Mutty Loll Seal was to pay me the costs of the second bill, and also paid the costs of the first. I was obliged to give the original executors an undertaking that I would not look to them for costs; seeing they would not sign the necessary papers without it. In March, 1848, the injunction was dissolved, and the suit dismissed. I continued attorney on the record up to that time. I should not have paid any attention to instructions coming from Brijonauth Dutt and Unnapoorna Dossee. I know of no arrangement between the executors Brijonauth and Unnapoorna Dossee on the one part, and Joygopaul Chatterjea on the other, by which the former persons agreed to dismiss the Burraul suit. They had no interest in the suit after the assignment to Mutty Loll Seal. From August I communicated only with Mutty Loll Seal. I received from him the costs for the two equity suits—the sum of Rs. 1,800 and odd. There were also costs for an indictment brought against Brijonauth by Joygopaul Chatterjea. The amount of those costs were Rs. 2,000.

CROSS-EXAMINED.—Ramchunder was a relation of Sreenauth Mullick; I cannot say if he was his son-in-law. I did not conduct the suits for Mutty Loll Seal as executors to Sreenauth Mullick. The costs of the Burraul

suits were paid by Mutty Loll Seal to Mr. Hedger, the attorney for Joygopaul Chatterjea. From a memorandum I took from my ledger this morning, I find that Rs. 911 were paid to Mr. Hedger for the dismissal of the Burraul suit. I find no other costs paid to Mr. Hedger. Mutty Loll Seal was not made a party to the first Burraul suit. I saw, shortly before the dismissal of the bill, the deed, by which Mutty Loll Seal became interested.

WILLIAM ANLEY.—I am an attorney of this Court. I was acting as attorney for Mutty Loll Seal in 1847 and 1848. This assignment was prepared in my office, was witnessed by me, and executed by Ramchunder Chowdry of the first part, and Mutty Loll Seal of the second. It was executed by both, on the date which it bears. I was not aware of any of the suits mentioned in it until I received instructions for the deed. I received instructions from both Mutty Loll Seal and Ramchunder. The terms were that Mutty Loll Seal was to pay the costs of those suits.

CROSS-EXAMINED.—Neither Ramchunder nor Sreenauth Mullick was ever a client of mine. I was not concerned for Mutty Loll Seal and others as Sreenauth Mullick's executors.

[*To the Foreman.*—The date of the assignment is 8th May, 1847.]

BRIJONAUTH DUTT.—I am the son-in-law and executor of Mohunchunder Burraul. I assigned the claim which Burraul had in Lot Porunbatty to Ramchunder Chowdry. This signature to a deed of assignment is mine. So is this to a receipt for Rs. 5,000, which was the consideration for the assignment. I had no interest in Lot Porunbatty after that. In the end of 1847, or beginning of 1848, I did not make, or authorise to be made, any agreement consenting to the dismissal of any suit by Mohunchunder Burraul. After that, I neither made, nor caused to be made, any agreement with Joygopaul Chatterjea.

GEORGE GORDON MACKINTOSH.—In March, 1848, I was Officiating Collector of Burdwan. The surplus proceeds of Lot Porunbatty, amounting to Rs. 36,000 odd hundred, were in my hands. I know Joygopaul Chatterjea. In March, 1848, I received this letter from Mr. Homfray to myself.* I also received a petition† from Joygopaul by

* Sup. 45. † Sup. 38.

dawk. This is the petition, in which he requests that the surplus proceeds of Lot Porunbatty should be paid out to no one but himself, and that he will attend personally to receive it. In pursuance of the statement in it, he attended personally. He came regarding this application of his and regarding the money. I don't recollect whether he applied for the money. What passed was only verbal. I showed him the mooktearnamah and he denied it, entering into a long rambling story, which I desired him to put into writing. I recorded a proceeding in Bengali. This is the record. I read Bengali. This record refers to his coming to me about the mooktearnamah and the money, and Mr. Hedger's visit to me. My impression is, that Joygopaul Chatterjea did apply to me for the money, but he made no written application, beyond the petition I have spoken of. The record I made, runs as follows:—" *On personally applying* to receive the surplus proceeds of Lot Porunbatty, Mr. Hedger stated 'I am to receive a portion of the money, &c.' " The record means that the personal application was made by Joygopaul Chatterjea.

[*Mr. Peterson.*—How can that be? The substantive which refers to " On personally applying," is Mr. Hedger.

Colvile J.—It does not mean that Mr. Hedger personally applied, but that on a personal application being made by somebody, Mr. Hedger stated something.

The Chief Justice.—There is an ambiguity in the record, and Mr. Mackintosh had better be asked what he intended it should mean.]

The meaning I intended was, that Joygopaul Chatterjea personally applied for the money, and that thereupon Mr. Hedger made a statement. Joygopaul afterwards filed a petition. He could not file an application, for the money was then tied up. This is the petition of Joygopaul, dated 6th April, 1848. I don't recollect the date of the rooboocarree or order taking off the attachment from the Principal Sudder Ameen's Court. The date on which Kistnochunder Roy presented to me the mooktearnamah in question, appears to have been the 10th March, 1848. Kistnochunder Roy did apply afterwards to get the petition back. After Mr. Hedger told me about the mooktearnamah, and that he had a claim on a portion of the money, I should have applied for instructions to the Principal Sudder Ameen how to act with regard to the payment of the money. This, however, is a matter of opinion. I was at a loss what to do, until the injunction from the sheriff came, tying up the money.

RAMAPERSAUD ROY.—I am the Government Pleader in the Sudder Court. I know Mutty Loll Seal and Joygopaul Chatterjea. I have known both about seven or eight years. I was on pretty friendly terms with both. Joygopaul used to retain me in his cases. Mutty Loll Seal used to consult me, but I don't remember whether he ever retained me. I know there were suits between them as to Lot Porunbatty both in this Court and the Mofussil. I believe I suggested to Joygopaul Chatterjea's attorney first, and Mutty Loll Seal's afterwards, that there should be a settlement between them. I know Mr. Hedger too, and used to see Joygopaul Chatterjea in his office very frequently. I knew that the estate had been sold for arrears of Government revenue, and that something below 38,000 Rupees was deposited for surplus proceeds. I know an arrangemont was ultimately effected, viz., that all suits between Joygopaul Chatterjea and Mutty Loll Seal should be determined, that Mutty Loll Seal should get three-fifths of the money, surplus proceeds in the Burdwan Collectorate, and that the residue should go to Joygogaul Chatterjea, who should pay Mr. Hedger from it his out-of-pocket costs. About Rs. 6,000 was to be given to Mr. Hedger, and the balance Joygopaul Chatterjea was to retain. Under the new Sale Law, the surplus proceeds could only be paid to the registered proprietor, or on his authority, unless prevented by a Court of Justice. I got a mooktearnamah drafted. I don't recollect exactly who drafted it, but I settled it myself on the terms I have mentioned. It was about the middle of February, 1848, that the draft was complete. I used to see Joygopaul Chatterjea almost daily at Mr. Hedger's, during this negotiation, and communicate with him on the subject. I also saw Mr. Hedger daily on my own business, not every day, but almost daily. I was present at the execution of one mooktearnamah. That mooktearnamah was sent up to Burdwan, as far as I know, and it was returned and cancelled, in consequence of some defect. It had been executed in my presence by Joygopaul Chatterjea. Mr. Hedger was also present on the occasion. It was at his office in Colvin's Buildings. There were others present, but I don't recollect their names. I don't recollect whether Mutty Loll Seal was present.

There was no draft of the second mooktearnamah. It was fair copied at once. I believe this is a fair copy. I think that, except as to the correction of the informality, this mooktearnamah corresponds with the cancelled one. I was not present at the execution of this document. In passing to

the Sudder, I gave it to either Mr. Michael or Mr. Hedger.
[*To the Chief Justice.*—This fair copy was prepared under my directions.]

I know Joygopaul Chatterjea's signature, but I can't swear that he signed this. It is like his in the main. There may be a slight difference. I cannot swear it is his; but I believe it to be his. This mooktearnamah exactly corresponds with the terms on which I have said it was agreed that the compromise should be effected.

Cross-examined.—I spoke first about this settlement of disputes to Mr. Hedger. I did so, because I visited both Mr. Hedger and Mutty Loll Seal. I thought it would be better for all parties to settle, because a man is in an unpleasant predicament when he is a friend to two parties who are fighting. I first spoke to Mr. Hedger about a month or a month and a half before the first mooktearnamah. I did not go into the details as to how the claims of these parties stood. Joygopaul Chatterjea and Mr. Hedger were both far too clever not to understand and know their own interest themselves. I only knew they were disputing, and I suggested a compromise. They arranged among themselves that Rs. 21,000 should be paid to Mutty Loll Seal, and that the rest should go to Joygopaul Chatterjea. I don't remember that I enquired of Mutty Loll Seal or Joygopaul Chatterjea as to what suits they had against each other. I did not make any enquiry as to their relative positions. On this particular occasion I acted as Mutty Loll Seal's friend—not professionally. Mutty Loll Seal and Mr. Hedger would be the best persons to say what was the reason why three-fifths should go to Mutty Loll Seal and two-fifths to Joygopaul Chatterjea. I received the instructions to fix these proportions from Joygopaul Chatterjea in Mr. Hedger's office. Who made up the accounts, I cannot say positively on oath. I did not suggest the settlement embodied in the mooktearnamah. I only suggested that the parties should settle their disputes. The terms of the settlement were adjusted between the parties themselves. I don't recollect whether Mutty Loll Seal stated to me that "he was willing to come to an amicable arrangement with Joygopaul Chatterjea if he received *his share* of the surplus proceeds of Lot Porunbatty." I have been examined here and elsewhere about these matters some eight times. Mutty Loll Seal occasionally visited Mr. Hedger, and Joygopaul Chatterjea was so constantly with Mr. Hedger, that my impression is that the two

met. I can't exactly recollect whether I had conversations with Joygopaul Chatterjea in presence of Mutty Loll Seal, in Mr. Hedger's office. It is six years ago. If I did say on any prior occasion that I did so, it must have been correct, for I must have spoken according to my then recollection, but I don't remember whether I did say so or not. Personally, I knew nothing of the details of the terms on which this settlement was brought about. The question whether Mutty Loll Seal should give a release to Joygopaul Chatterjea, concerned Mr. Hedger, Joygopaul Chatterjea's attorney, and not me. I was not the attorney in the case. I don't recollect that any writing was given to Joygopaul Chatterjea, evidencing the agreement between him and Mutty Loll Seal. I did not take care that Joygopaul Chatterjea, after he gave that mooktearnamah, received some security which would protect him from any future claims. Why should I bother my head about that? All I desired was to put an end to disputes between parties, all of whom were my friends. The three parties were perfectly knowing enough to understand their own interests. I got back the cancelled mooktearnamah from Mutty Loll Seal three or four days after it had been sent to Burdwan. He told me the Collector would not receive it, as there was some mistake. He told me the contents, or showed me a letter from Kistnochunder Roy. I cannot swear that I saw the letter. I might have seen it. I cannot swear that he took the mooktearnamah then, or shortly after, to Mr. Hedger's office. I told Joygopaul Chatterjea and Mr. Hedger about the mistake. I gave the mooktearnamah to either Mr. Hedger or Joygopaul Chatterjea. They told me to have a new one made. I do not recollect whether a fair copy was made from the draft or from the one returned. I cannot swear one way or the other. I did not keep the draft of the first mooktearnamah. I did not, because it was not a part of my Court business. I had not acted professionally, but only as a friend. In such cases we do not preserve drafts, as we do when we act professionally. There is Baboo Prosonno Coomar Tagore, an ex-pleader of the Court here, and he can confirm me. My impression, therefore, is, that I kept no draft of the first mooktearnamah.

There are half-a-dozen men here now, for whom I have interested myself in the same way, and I never kept drafts of the papers I drew in their cases. I have been examined about this draft before. Still I have not looked for it among my papers, because I did not know I should be expected to produce it here. I was not served with a subpœna *duces tecum*. Had I

been, I should have searched for the draft. But my impression is, that it is not in my house. I was examined in relation to this very mooktearnamah before Baboo Russomoy Dutt some time ago. I said nothing on that occasion about the cancellation of the first mooktearnamah, because I had only to answer certain written interrogatories which came from the Mofussil Court, and beyond which I could not travel. In such cases, the parties on the other side are not allowed to cross-examine, and the Judge will not go beyond the questions sent. Previous to making the mooktearnamah, I met all the parties concerned in it. This mooktearnamah was written by Juddoonauth Bhose. I don't know where he now is. He lived about ten miles from my country-residence, and used to visit me. After the second mooktearnamah was executed, I can't say whether it came back to me or not. It is now six years ago. I might have taken it to Mutty Loll Seal, or not. If he has ever stated that the second mooktearnamah was given to him by me, it may be that he was right. I can't swear that I took or gave it to him. I have no distinct recollection, but I might have taken it to him. I was not in this room, when Mutty Loll Seal was examined here in December last, though I was in the Court House, I did not hear him examined. I never stated positively that the informality in the first mooktearnamah was a misdescription of Joygopaul Chatterjea's residence. I said it was some defect of that kind. The fact of the mistake was mentioned to me by Mutty Loll Seal. I should think he must have known what the error was. I don't recollect what the error was. I recollect it was some trifling error. Kistnochunder Roy is a landholder in Burdwan. I don't think he acts as a common mooktear. I believe he is a friend of Mutty Loll Seal, Mr. Hedger, and Joygopaul Chatterjea. What the degree of friendship may be, I cant say, but he was known to all the parties. I don't exactly recollect that Joygopaul Chatterjea objected to Kistnochunder Roy being selected mooktear, nor in what way he objected. My impression was, that this compromise was to include all suits relating to Lot Porunbatty. I don't recollect whether the suit by Joygopaul Chatterjea against the executors of Sreenauth Mullick related to this property. I don't recollect such a suit. There might have been such a suit; but it was not, I suppose, personal to Mutty Loll Seal. I cannot say whether this was one of the suits which was to be determined under the mooktearnamah. I know that all suits between Joygopaul Chatterjea and Mutty Loll Seal

were to be included. I had not seen Joygopaul Chatterjea's brothers, and, to the best of my recollection, I did not then know that they had an interest in Lot Porunbatty. Joygopaul Chatterjea alone was the registered proprietor of the talook. I don't recollect whether I stated on a previous occasion that "I became aware of the interest of Dwarkananth Chatterjea and Beressur Chatterjea prior to the execution of the mooktearnamah." Joygopaul Chatterjea was the only man I saw; he was managing everything; he was the recorded proprietor; he could do with the money as he liked, whereas his brothers I never saw. I say again I don't know whether I have ever stated before, that prior to the execution of the mooktearnamah, they were interested. I might have said so on a former occasion, but if they were, what had I to do with it? I don't recollect whether I said at the last trial "that, at the time I made the mooktearnamah, I did not know the brothers were interested." I saw the promissory note given. I did not take it into my hand, nor did I read it. But I know the contents from my knowledge of the circumstances under which it was given. My impression is, that it was not negotiable. It was given to satisfy Joygopaul Chatterjea that he should suffer no loss from the money in the Collectorate being entrusted to Kistnochunder Roy, and the time of payment was so arranged as to give time for the arrival of the money from Burdwan. I might have said on a former occasion, "I saw the note—it was not negotiable." I say so again. I saw the note, but did not read it; and I know it was not negotiable from knowing the circumstances under which it was given. I did not *see* it—in the sense—that I did not *read* its contents. Seeing is one thing, reading another. The note was made payable in one month, because, I believe, there would be a delay in taking out the surplus proceeds which were attached. Under all the circumstances, one month was the probable period. There were suits here, suits there, injunctions from this Court, injunctions from the Mofussil Courts, and all these had to be dismissed and dissolved before the money could be paid out. It would be very extraordinary indeed, if, under these circumstances, the money could be taken out in three days. The mooktearnamah included *all* the claims of Mr. Hedger against Joygopaul Chatterjea down to the day on which it was executed. Juddonauth Bhose was a sort of apprentice. I don't know where he is now. He is certainly not with me.

[*To the Foreman of the Jury.*—The first mooktearnamah

was drafted by one of my mohurrers under my instructions. I told him what the terms were to be, and he framed the draft, which I settled. I received no written instructions as to the terms of the settlement.]

HURROCHUNDER SIRCAR.—In February, 1848, I was a serving writer in the employ of Mr. Hedger. I remember a mooktearnamah having been signed by Joygopaul Chatterjea on the 12th February, 1848. I was an attesting witness to the execution. I took the instrument to the Police Office. Joygopaul Chatterjea went with me. I appeared before the Magistrate, and stated, upon oath, in reply to a question from the Magistrate, that it was executed before me. Joygopaul Chatterjea was there at the time. After that we both returned, and I gave the mooktearnamah to Mr. Hedger. I look at this mooktearnamah. It is the one in question. The first mooktearnamah was written on a piece of paper like this. I was in the habit of going to the Police to get mooktearnamahs registered.

CROSS-EXAMINED.—I am in Mr. Hedger's employ now. I have been in his service since 1847, except for a few days. During those days I lived in Chowringhee gaol for six weeks. I had a taste for sweetmeats, and was imprisoned for stealing sweetmeats. Mr. Hedger discharged me for that. I was taken back by him a few days after. I gave evidence here at the last trial. Joygopaul Chatterjea did not acknowledge his signature to the first mooktearnamah before the Magistrate. He was there however, standing beside me. I did say once before, that he acknowledged the signature before the Magistrate, but by that I meant, that because he stood beside me, and did not dispute it, he acknowledged it. The reason Joygopaul Chatterjea accompanied me to the Police was, that as I was the only witness who went to prove his signature, and the Magistrate might object to receive my unsupported testimony, he might be present to acknowledge it himself. I don't recollect whether I assigned this reason ever before. I don't remember whether I stated on a former occasion that Joygopaul Chatterjea did not go with me. I may, or may not, have gone on other occasions to acknowledge signatures to mooktearnamahs before the Magistrate: my recollection is that I have gone; but whether the parties executing the instruments accompanied me or not, I do not remember.

Surroopchunder Hazra.—I have known Joygopaul Chatterjea since the Bengali year 1248. I was, and still am, his mooktear. I still hold a general mooktearnamah from him on a four-rupee stamp paper. From 1248 to Faulgoon 1254 (February and March, 1848), we were in constant correspondence. I filed twenty-two of his letters in the Princpal Sudder Ameen's Court. These are the letters I look at this (*Exhibit B.*) It bears a post-mark. I received this by post, and filed it. This is Joygopaul Chatterjea's signature. I see this other letter (*Exhibit C.*) It likewise bears Joygopaul Chatterjea's signature, and I filed it after I received it. I am well acquainted with Joygopaul Chatterjea's signature. This signature to the mooktearnamah is his. I can't speak to the hand-writing of Dwarkanauth Chatterjea. Under the letter (*Exhibit C.*) I filed a safeenamah. I know of a mooktearnamah which went to Burdwan a few days before this mooktearnamah. It was returned in consequence of some defect. I am a resident of Burdwan. When Joygopaul went up to Burdwan he used to lodge with me. I know Mr. Hedger. I saw him on a former occasion at Burdwan.

Cross-examined.—For the last four years, Joygopaul Chatterjea has not entrusted me with any business; but a general power from him to me is still filed in the cutcherry of the Principal Sudder Ameen and has not been yet revoked. I have received no letters from him subsequent to the date of the letter of 25th February, 1848. Occasionally, Joygopaul Chatterjea went to Burdwan himself, and transacted his own business. If he sent up any papers to Burdwan to me to file in the cutcherry, I should know of them, but not otherwise. I did not know at the time, but I have heard, subsequently, that he had sent a petition to the Principal Sudder Ameen respecting me. I heard of this petition about fifteen days after it had been filed. After it had been filed, I received a letter from Joygopaul Chatterjea, requesting me to prepare and file an answer in Suit No. 28 on the civil side of the Court there. This petition, which you show me, does not relate to a safeenamah, but to a sum of money deposited in the Collectorate, and requests the Principal Sudder Ameen not to pay it to me. In Suit No. 28, I believe Joygopaul Chatterjea himself signed the vakeelutnamah. After this petition was filed, I executed a vakeelutnamah in Suit No. 10. I am not aware of a letter being written by Mr. Hedger on behalf of Joygopaul Chatterjea to the Collector of Burdwan relating to myself

in reference to the surplus proceeds of Lot Porunbatty. I am not aware that, in consequence of that letter, the Collector passed an order on his treasurer prohibiting him to pay any money to me. I see this order in Bengali passed on the letter :—" Ordered that this letter be placed among the records, and when any petition is presented for the surplus proceeds of Lot Porunbatty, let this letter be brought up with it." I look at the letter of 25th February, 1848. I received it from the hands of a messenger. His name was Sudoochurn Bhose, and he came accompanied by one Mothoor Nye. I was examined by the Principal Sudder Ameen with respect to this razeenamah and safeenamah. A few questions were put to me. Mothoor Nye was a resident of Bhowanipore, and followed some trade or another. His family dwelling-place is in Nadoorea, about four or five miles from Burdwan. I never saw him hawking about scales, but I have heard he is a maker of small scales. He is a tenant of Ramdhone Banerjea, not of Kistnochunder Roy. He does not hold any land of Kistnochunder Roy. He is in no way connected with Kistnochunder Roy. I received the letter, dated 25th February, 1848, two or three days I believe after the date it bears. I cannot say where Mothoor Nye and Sadhochurn Ghose are. I filed the safeenamah I believe in Faulgoon, 1254 (February, 1848). My recollection is I that filed all these twenty-two letters in the Principal Sudder Ameen's Court twice.

All the letters, except that dated 25th February, 1848, I got through the post. This letter (No. 3) does not contain Joygopaul Chatterjea's signature in Bengali. It bears, however, the English initials "J. C.," with which I have frequently known him to sign other letters. Thirteen of these twenty-two are signed in the same way and contain the name in full in Bengal. After the petition to the Collector regarding me, Joygopaul Chatterjea sent me this mooktearnamah. It is signed by his nephew Beressur, but it came to me from Joygopaul Chatterjea. You will find allusion made to it by Joygopaul Chatterjea himself in letter No. 15. I see the letter of 14th February, 1848 *(Exhibit B.)* The Bengali signature is his. The initials " J. C." are in that too. I was examined before the Principal Sudder Ameen. I was not fined by him. I am Kistnochunder Roy's mooktear, and live near him. He and Mutty Loll Seal are friends and correspond. I was not aware, prior to this trial, of any letter having been written by Mr. Hedger to the Collector about me. Mr. Hedger never applied to me

by a letter to give up my general mooktearnamah. I never received any message from him to that effect. Under that general mooktearnamah I could have entered into any arrangement in Joygopaul's name that I chose. Under it, if the money in the Collectorate were not tied up, I could have withdrawn it. Under it, I could do just as much as Joygopaul Chatterjea himself. My vakeels in the Principal Sudder Ameen's Court were fined, but for something else. The razeenamah and safeenamah were taken off.

Mr. R. B. Bennett.—I am the Acting Post Master General. The dâk mark on the letter *(Exhibit B.)* as far as I can judge is genuine. From its appearance, I believe it was posted, not in the General Post Office, but in some receiving-house connected with it. Were it brought to me, I should take the dâk mark upon it to be genuine. Some of the other letters also bear the mark of receiving-houses, and not of the General Post Office.

Cross-examined.—The stamp of the receiving-house appears on the letter *(Exhibit B.)* There is no mark upon it or upon others of the Post Office in which the letter was to be delivered. There is no such mark on any one of these letters. The year on the post-mark in the letter *(Exhibit B.)* is written with a pen. I cannot say whether it is 1841 or 1847. The last figure is not legible. It may be either 1 or 7.

[*To the Chief Justice.*—All the letters bearing post-marks appear to have gone through the Post Office. I cannot say more than that.]

Gungadhur Chatterjea.—I am the half-brother of Joygopaul Chatterjea, and had a share in Lot Porunbatty. I assigned my interest in the talook to Mutty Loll Seal, and have no interest in it now. I know Joygopaul Chatterjea's signature. I look at the signature in this mooktearnamah. It is his. There is no doubt it is, though he has not formed the initial letter *J.* as he usually does. The signature in the letter *(Exhibit C.)* is all like his, except the single letter *J.* I don't know the English initials. The signature in the letter *(Exhibit B.)* is his—written with a Bengali pen. I don't know Dwarkanauth Chatterjea's signature. He separated from us when very young. Notwithstanding the difference in the letter *J.*, I believe the signature in the letter *(Exhibit C.)* to be his.

We do not live together, but are neither friends nor foes.

We performed separate *shrauds* for our deceased father. The reason for that was because we fell out.

Some documentary evidence was put in and the case for the defence closed.

Mr. Peterson applied for, and obtained an adjournment, until the following day, prior to addressing the Jury in reply for the prosecution.

Friday, 27th August.

In addition to the documentary evidence already put in on behalf of the prosecution, *Mr. Peterson* now tendered the petition by Joygopaul to the Collector, dated 14th January, 1848,* and also the depositions of Ramapersaud Roy, taken under a commission from the Mofussil Court, by one of the Judges of the Petty Court.

The first was intended to establish some contradiction to Surroopchunder's statements regarding the continuance of his employment as mooktear, by Joygopaul:—and the depositions were supposed to support some alleged discrepancy between their contents, and the evidence now given by Ramapersaud Roy.

No objection was made to the admission of these documents.

Mr. Ritchie shortly commented on them and

Mr. Peterson again addressed the Jury for the prosecution at very considerable length, but his reply consisted of little more than repetition of the opening speech.

The Chief Justice next charged the Jury, to the following effect:—

GENTLEMEN OF THE JURY.—The three defendants are indicted for three distinct conspiracies. As several matters have been introduced into this case, which have no connexion with the questions upon which you are to decide, it is necessary that I should draw your attention pointedly to the exact matter of the charge. By the first count they are indicted for a conspiracy to cheat and defraud Joygopaul Chatterjea, the prosecutor, of his share of that aggregate sum in the Collector's hands, which was the net produce of the sale of a talook which was purchased originally by the

* See ante page 38.

father of the prosecutor, benamee in the name of his son, Joygopaul Chatterjea. The charge does not extend to the shares of the other members of the family, and unless an intention to cheat them of those shares, in some way conduce to the proof of the conspiracy laid, viz., to cheat Joygopaul Chatterjea of his, it would be simply irrelevant to the charge preferred.

The others are charges of conspiracies falsely to indict and prosecute Joygopaul Chatterjea for the crime of wilful and corrupt perjury. As there were two indictments for perjury, and founded on evidence given on several occasions, the charges of conspiracy are also divided into two; one relating to the first, and the other to the last indictment for perjury.—The first count contains at length what are termed the overt acts of the conspiracy; these are the forgery of the mooktearnamah, its presentment to the Collector, a fraudulent and unauthorized compromise of a suit, which is alleged to have been false and fraudulent, and a false affidavit made to obtain an injunction. The overt acts are not the offence itself, but are stated as acts done in furtherance of that offence which conduce to its proof. In this case the overt acts in themselves constitute far graver crimes, than those for which the defendants stand indicted. The proof of conspiracy is merely inferential in this case from the supposed commission of far graver crimes, for which they have not been prosecuted. It is not a case in which there is some proof of a distinct compact, and subsequently of resulting acts; but it is a case, in which the sole basis of the imputed conspiracy is an inference from their supposed participation in the graver crimes of forgery and repeated perjury. It is perfectly true, as was urged by the Counsel for the prosecutor, that the dark covertness of crime cannot often be laid open, that conspiracies like other crimes must be generally supported by circumstantial proof. I do not know why the defendants are so indicted, whether on the ground of insufficiency of proof, or for what other reason. We think it right, however, to give you our united and solemn caution not to be content with less proof, than you would require if each of these defendants stood indicted for a felonious forgery or uttering of that mooktearnamah, or for wilful and corrupt perjury; for it would be indeed of serious and dangerous consequence to the peace and security of man, if, (where a prosecutor declined to prefer an accusation for a graver crime, but offered still, that graver crime as inferential proof of some minor charges,) a jury relaxed its wholesome

vigilance and jealousy, and was content with less evidence and feebler presumptions of guilt. In the whole course of a long experience of Criminal Courts, I can recal no instance, in which a felonious forgery not having been charged, a felonious forgery was yet offered as the evidence of a mere conspiracy to cheat. Formerly the doctrine of merger, as it was generally understood, would have prevented such an attempt. This rule had its origin in simpler times, yet it was not wholly without its use, nor founded on reasons wholly artificial and senseless. It often happened, however, that a criminal eluded justice by reason of the rule, and consequently the Legislature has lately provided, that a man may be convicted of the attempt when charged with the full offence, and in some instances the converse is provided for. If two committed a robbery in concert, which would be proof of an agreement to commit that act, this mode of indictment would enable a prosecutor to charge a conspiracy to rob, and to offer the actual robbery in proof, as an overt act of that conspiracy. I am persuaded, that the Legislature never intended to permit a private prosecutor so to prefer his accusation, that no adequate punishment could be awarded to the offender. If this example be followed, the corrective course will be found in the power of the Court to quash the indictment, and to direct the graver offence to be prosecuted. If these men are guilty of the offences imputed to them, public justice required, that they should have been so indicted as that a punishment adequate to their crimes might be dealt out to them on conviction. Had they been guilty, had they been so indicted and convicted, nothing on earth should have induced me to abate one degree of the severe punishment, which the law awards to crimes so detestable in themselves, and which are fraught with more than ordinary mischief, when committed by men of a station superior to the common class of offenders.

Having pointed out to you the real nature of the charge and the degree of proof, that it is proper you should require, I now proceed to examine into the weight of the proof that has been given. In connexion with the direct testimony, must be viewed the probabilities of the case on both sides. The learned Counsel, Mr. Peterson, in his opening address, alluded to some observations of mine in a civil trial involving some of the questions that are under consideration here. His observations seemed to impute to me opinions which never have been mine. He, I am sure, would not intentionally pervert my

meaning. Divorced from the context, those quotations did not represent my meaning: what I said then, I shall repeat to you now, though now in a more expanded form, viz., that in estimating the probability of the commission of an offence by any person, we must pay due regard to the motives to commit the crime, and that where the motive is a pecuniary one, the wealth of the offender is no unimportant consideration. It is not that wealth or station are any guarantees against the commission of crime. Had I ever entertained so vain, so foolish an opinion, my sad experience, here that high office is no security for good behaviour, would effectually have dissipated it. The church in its Liturgy, in a composition as wise in spirit as it is beautiful in language, prays that we may be delivered in the time of our wealth—not of our poverty. When no motive to a crime can be found except the desire of lucre, that is a reasonable comparison, which is constituted between the gain and the loss which may result from its commission. Experience and the history of Criminal Courts can show us, indeed, instances of crimes unaccompanied by any adequate temptation. We have heard of ladies beset by no necessities turning petty pilferers. But such are in general exceptional cases. In estimating probabilities, motives cannot, in a general sense, be safely left out of the account. In this case, no other motive can be assigned to the conspirators in common, but the desire of gain. Mr. Hedger and his clerk were not at variance with Joygopaul Chatterjea, and had no resentments to gratify at his expense. It could not be foreseen, that Joygopaul Chatterjea would furnish provocation for a criminal charge: and if the reduction to poverty were the motive of one of the defendants, the prosecution of the suits would more seriously have harassed the prosecutor than their abandonment.

The direct evidence is that of Joygopaul Chatterjea, and the evidence as to hand-writing. His direct testmony is opposed to the former statements on oath of the three defendants, all of whose depositions on former occasions have been put in on the part of the prosecution. His direct testimony is, therefore, outweighed by theirs, first, as it is the evidence of one man opposed to that of three, and next because their coincidence in the main story is some argument in support of its truth, as also because the crimes imputed to them are graver than those which their case imputes to the accuser: the crime of forgery being added to that of perjury. You, gentlemen, as men of sense and practised in the ways of the world, must have observed how often it happens

that, in consequence of conflicting statements, no safe step can be taken even in a matter of trifling moment. If two men make opposite statements as to the same matter, and there is nothing in the character of the men, in the nature of the case, or in extrinsic circumstances to give to one statement more a character of probability than to the other, we must necessarily remain in a state of suspended judgment on the point in dispute. It is the same in a Court of Justice. In such cases, he on whom the burthen of proof is, fails in the assertion of his claim. The graver the matter of the enquiry, the greater must necessarily be our caution and reluctance to act on conflicting statements. If there are presumptions to be overcome, the stronger must be the proof to overcome them. I am glad to support my observations on this point by the authority of an excellent writer on the law of evidence, the late Mr. Starkie, whose work I quote the more readily, for I have myself heard that very learned judge, Mr. Baron Parke, quote it as authority, and another highly respected judge, Mr. Justice Coleridge, I have known also to quote from the same work. It is a work which, in its first part, might be read with advantage, and profit by all who have ever to decide on conflicting evidence, whether in Courts of Justice or elsewhere. The principles there enforced and illustrated are of universal application. That learned writer expresses himself thus:—" Where direct testimony is opposed by conflicting evidence, or by ordinary experience, or by the probabilities supplied by the circumstances of the case, the consideration of the number of witnesses becomes most material. It is more improbable that a number of witnesses should be mistaken, or that they should have conspired to commit a fraud by direct perjury, than that one, or a few, should be mistaken, or wilfully perjured. In the next place, not only must the difficulty of procuring a number of false witnesses be greatly increased in proportion to the number, but the danger and risk of detection must be increased in a far higher proportion; for the points on which their false testimony may be compared with each other, and with ascertained facts, must necessarily be greatly multiplied.—If that, which is to be proved, involves something *primâ facie* highly improbable—if some other presumption is to be met and surmounted, then evidence is required of a higher degree." The learned author whom I have quoted remarks, that in civil suits, there may be just a mere equipoise of evidence: in that case, the claim will not be proved: in others, as for instance, in disputes about the boundaries of adjacent manors,

a mere preponderance may suffice: that if some *primâ facie* legal right is to be displaced, or some legal presumption to be overcome, a mere slight preponderance will not suffice; that it will not suffice to establish a will against the heir by its appearing rather more probable that the deceased died testate, than not: and when he speaks of criminal prosecutions, he says, that no mere preponderance will suffice, but that there should be such a preponderance as to leave no reasonable ground for doubt about the correctness of the conclusion. Now, gentlemen, if you apply this reasoning to the present case, you will see that so far as respects the direct testimony, laying aside for a moment the consideration of the evidence as to hand-writing, the balance is against the prosecution, and Joygopaul Chatterjea's statement is *primâ facie* outweighed by that of the three defendants. It is true, that you need not have here, as on an indictment for perjury, more than oath against oath. That rule cannot be defended as a rule founded in all cases on reason, for it is easy to conceive cases, where the credit due to one person is so far beyond that which is due to another, as to leave no ground for reasonable doubt in acting on the testimony of a single witness, though directly in conflict with that of another. But though the rule be unwise as an inflexible rule of law, the principle on which it rests, is of great value in the difficult task of weighing evidence. If you had heard nothing of any of these parties before, there is no reason, why you should have preferred the statement of Joygopaul Chatterjea to that of Mr. Hedger, or to that of either of the other defendants: nor does the evidence show anything as to him, as respects position, character or otherwise, to give him precedence over any one of them. Consequently, on the general principles before asserted, the balance of testimony would be against the accusation.—The evidence as to the hand-writing of the mookhtearnamah seems to be balanced: that of Mr. Aviet makes against the prosecution. He, a sort of expert, sees no difference, except in a single letter, and thinks that a change of pen might account for such difference. Two other witnesses for the prosecution say, that they think it is not Joygopaul Chatterjea's hand-writing. One of these, however, thought that the Exhibit B.—one of the alleged forged letters—*is* in the hand-writing of Joygopaul Chatterjea. If he is right in that opinion, he must be wrong in the conclusion, that the mooktearnamah is a forgery, for that letter acknowledges it: if he is wrong in his opinion of the hand-writing of that letter, what is the

value of his opinion on the subject of the hand-writing of the mooktearnamah? It is, at the best, but a weak kind of evidence. Men may, from accident or design, vary in their hand-writing. The other witness is not open to any such impeachment of the value of his opinion; but then there is opposed to it the evidence of Ramapersaud Roy and of the last witness for the defence, who is a half-brother of Joygopaul Chatterjea. If indeed Ramapersaud Roy can be viewed as an accomplice, his testimony must be set aside; but if his testimony is to be depended upon, then it is of weight, as he knew Joygopaul and was acquainted with his hand-writing. As to the other witness, the observations of Mr. Peterson are deserving of attention. He comes to speak against his brother. He says, that there is no enmity on his side, but he admits, that at a past time there was some division. Still Joygopaul Chatterjea is not on his trial, and other motives than enmity may prompt him to give evidence on behalf of defendants, charged with a forgery of that which he may think no forgery: and it is to be observed, that if enmity be the instigating motive, his hatred would have been better served by giving the same evidence when Joygopaul Chatterjea stood indicted. On the whole, then, the evidence as to hand-writing may be viewed as balanced, and the balance still so far against the prosecution.

We think that the case needs strong corroborative testimony. The learned Counsel for the prosecution seemed to feel that it required some, for he dwelt much on the probabilities which, as he contended, should incline the scale on the side of the prosecution. These were, first, that two verdicts had been pronounced already in favour of Joygopaul Chatterjea's innocence.—Secondly, that it was wholly a one-sided agreement, which neither Joygopaul Chatterjea, nor any one in his place would have sanctioned.—Thirdly, that there were such discrepancies in the evidence of the three defendants as given by them on former trials, as alone sufficed to stamp their story as false.—And lastly, that it was propped up by other forgeries.

Now, gentlemen, it is necessary, that these probabilities should be carefully examined—should be weighed by themselves, and then weighed against opposite probabilities.

As to the first, it is now abandoned, the learned Counsel admitting that it was pressed by him in forgetfulness of the rule laid down in the celebrated case of the Duchess of Kingston. The learned Counsel, in his opening address, went so far as to say, that in his opinion, these two verdicts virtually

decided this case. The errors on this subject have been so general and so wide-spread, that it may be proper to offer a few remarks in connection with them. The same learned writer whom I have already quoted, states, that, in general, judgments in civil suits are not evidence in criminal suits. The reason is, not merely that the parties are not the same, but that the degrees of evidence are not the same. Therefore, to infer that because in a civil suit a decision is one way, on the weight of testimony, and that because on an indictment for a crime arising out of evidence in that suit there is an acquittal of the person whose testimony was discredited and not acted on, there is necessarily, because of such findings, a conflict of decisions, is to disregard or lose sight of fundamental distinctions. Again to conclude that because a Jury acquits a defendant, they necessarily stigmatize his prosecutor, is to draw a false and rash conclusion. In fact, the Jury are in no case charged to inquire into a prosecutor's crime, and when he and the man whom he accused, change places, he in his turn has the benefit of the ordinary presumption in favor of innocence, and can be convicted on none but such clear and cogent evidence as leaves no rational ground for doubt. A verdict, though entitled to the highest respect, is but opinion, and how vain to ask a Jury to convict on the opinion of some former Jury, when they are sworn to decide according to evidence, opinion in such cases being no evidence at all. The mere judgment merely proves that such judgment was given. When the evidence on which it proceeds is again laid before a Jury, they must form their own opinion on it; and the evidence in those cases are not the same.—Again, a judgment is not evidence of any thing that is to be inferred by argument from it; but in this case, the inferences would be two-fold at least, first, that because a Jury acquitted, they must have concurred in condemning his accusers, and next, that the condemnation was correct. The first head therefore fails.

The second requires that I should state to you what is our opinion on the legal right of the parties before, and at the date of this alleged compromise. Mr. Ritchie stated to you the law clearly and quite accurately. I will, however, again go over this perplexed matter, dismissing every thing that is technical, and stating the matter to you, so that you may have no difficulty in understanding me. There were three equity suits. That which was instituted by Joygopaul

Chatterjea against the executors of Sreenath Mullick, of whom Mutty Loll Seal appears to have been one, was for the wasilat, as it is termed, or mesne rents and profits of the talook; and that suit followed in its nature the fate of the Burraul suit. If the contract, in that Burraul suit, took effect, then Joygopaul Chatterjea, in the suit just named, was but a trustee for the successful party, who by reason of the assignments from the original purchaser, was Mutty Loll Seal, one of the defendants. Therefore, it is unnecessary to dwell further on this suit.—With respect to the Burraul suit, the matter stood thus:—the estate was sold at a sheriff's sale; the father of Joygopaul Chatterjea became the purchaser in the name of his son. But as it too often happens, the purchaser had bought only a litigated title. It would have required a long and expensive litigation to oust the parties in possession. He, not having the means to do so, sold to the original Burraul, not a law-suit, but the estate. The contract is set out; Mr. Peterson contends that the true construction of it is, that it was subject to a condition precedent, on the part of the vendee, which he not having performed, the contract was no longer binding. It is to be observed that the answer of Joygopaul Chatterjea sets up no such defence, and in our opinion it is not at all tenable on the true construction of the contract. It seems to have been prepared by an attorney, and embodies that which is not an unusual term in similar contracts: viz., a stipulation for possession before the actual conveyance. The payment of the purchase-money and the execution of the conveyance are ordinarily concurrent acts. Sometimes there is great delay between the signature of the contract and the execution of the conveyances in deducing a title and making it clear. A party desirous of obtaining possession in the interim sometimes stipulates for it by contract. As soon as the contract is signed in equity, the parties change sides, the vendee becomes the owner of the estate (in equity), the vendor the owner of the money. The vendee is a trustee of the money for the vendor, the vendor a trustee of the estate for the vendee. The unpaid vendor has a lien on the estate. This was the estate of the parties at the execution of the contract. It provides for the payment of 500 Rupees by way of earnest, which was paid. Burraul was to pay all expences of litigation, and ran the risk of losing the money so expended

in case the title proved really bad, or he was unable to prove it good—no slight risk to run, where right is so liable to be defeated by falsehood and fraud.

When he should be put into possession, then, and not before, he was to deposit the purchase-money in a bank, instead of keeping it in his own pocket, and when the estate was legally transferred to him, by the due entry in the Collector's book or register, then the purchase-money was to be paid over. The purchase-money was to bear interest at 3 per cent. from the date of the bargain. It is idle to consider whether the bargain was a good or a bad one. There was no fraud, and no such inadequacy of price, (if there was really any) as to defeat the equity of the purchaser. The contract was part performed. The answer which was put in by Joygopaul Chatterjea in fact admitted the contract, and part performance also, and if the suit had gone on to a hearing, there must have been a decree for a specific performance of the contract and for an account. It is quite clear, and now indisputable, though it was doubted in the opening speech for the prosecution, that Mutty Loll Seal had become, by assignment, beneficially the owner of the estate, subject only to the lien for the purchase-money, and the right to the proceeds of the estate followed the same rule as the right to the estate itself. Consequently, of the aggregate sum of 36,000 and odd Rupees, the whole interest of the whole Chatterjea family embraced only so much as the purchase-money and interest amounted to, liable however, to be further reduced, according as the state of the account turned. But on the evidence, it seems clear that the account would, if taken, have turned considerably against the Chatterjeas; for Joygopaul Chatterjea speaks only of a small outlay on his part, not amounting to more than 200 Rupees or thereabouts, whilst his possession continued for a considerable, though on the evidence an uncertain time; and the value of the estate, which is stated, and probably over-stated, by him, to have been for a time 3,000 Rupees, or thereabouts, per annum, must still have been so much as to amount, for the period of his occupation, to a considerable sum. The case for the defence is that Co.'s Rs. 8,500 was to come into the hands of Joygopaul Chatterjea, the proper hand to receive the part which was not his, whoever might be interested in it: the three-fifths was vested in Mutty Loll Seal as mortgagee. On a true understanding of the rights of that family, it is difficult to see how any member of it could be defrauded by this compromise. The charge, however, is, not that the combination

was to defraud the others, but only Joygopaul Chatterjea, of his share. Now his share was subject to a charge by way of mortgage to Baboo Mutty Loll Seal, as to which there is a dispute regarding the amount due, and he was, besides, considerably indebted to Mr. Hedger. And unless their united claims fell below his three-fifths of the real interest of the Chatterjea family in the money, as I have explained it, he could not be a loser by the terms of the agreement.

It now becomes necessary to state the real character of the mortgage suit and of the claims of Mr. Hedger. The suit was a common foreclosure suit. It was in effect a defenceless suit, for the mortgage and the assignment could neither of them have been impeached. The motives which may have led Mutty Loll Seal to take this assignment of the mortgage from the two Chatterjeas who assigned to him, are not in proof. If they were, as was suggested, vindictive motives, with a view to harass, by litigation, his opponent, Joygopaul Chatterjea,—that act is not criminal by our law, the claim being a well-founded one, and the assignment a legal transfer of an estate, with an equitable transfer of the money. That such a motive may have operated, is probable on the evidence, which discloses that there had been war to the knife between these two Hindoos, amongst whom the passion for litigation is often a very strong one. They often exult in an inconsiderable success on a collateral point in a law-suit, as an Emperor might exult in a decisive victory, and to relieve the torpor of life, take to law, as a rich *ennuyé* takes to the gaming table. But it cannot be charged as a legal wrong if a mortgagee or the assignee of a mortgage uses only his rights under the contract. By that contract, unless the right be restricted by positive agreement, the mortgagee is entitled to the possession of his pledge—the land, the legal title to which is transferred to him. In England, mortgagees are shy of taking possession: here they are less so. If possession is claimed and is not given up, as it should be—for this, like other contracts, should be punctually fulfilled—then the costs of the litigation to procure possession are self-inflicted costs on himself by the mortgagor. Why oppose a mortgage title in ejectment, to which rarely any successful defence can be made? The suit for a foreclosure may be stopped by payment and redemption. Time is given. The mortgagee is entitled to his money at the time when it is due by contract. Therefore, Mutty Loll Seal, in instituting his suit and his ejectment, violated no legal right of Joygopaul Chatterjea, let his

motives have been what they may, and they could not at that time have been shared by the other defendants. In the progress of that suit, an unjustifiable step was taken: viz., the procurement of a reference to the Registrar, instead of the Master. The reference to the Registrar of the account is merely for the sake of cheapness and despatch, but it takes place only when the account is one of simple computation only.

In this case, as Baboo Mutty Loll Seal was in possession, the reference to the Registrar was wrong. Whether this was crafty, or simply erroneous, does not appear. If craft, it was a stupid contrivance to give in its result a triumph to the adversary. It was not likely to escape the notice of so vigilant and keen an observer of Mutty Loll Seal's operations as Mr. Hedger, who seems to have baffled Mutty Loll Seal successfully at various stages of the contest. Consequently, the decree was set aside, and the account would have been then to be taken in the usual way. The correspondence shows how this triumph was exulted in. But in reality, it had very little to do with the final results of the suit. The mortgagee would be entitled to the principal, interest and costs generally, including the costs of taking the account, with a set off as to the costs of the motion to set aside the reference to the Registrar. The costs of the ejectment would also enter into the mortgagee's costs, so that the whole sum due on the mortgage account, allowing for the rents and profits of the intermediate occupation, would appear to be at least the sum at which it was stated—viz., a sum a little exceeding 6,000 Rupees. It was stated by Mr. Dickens at a much higher sum, but that is not proved. Now, Joygopaul Chatterjea himself rates Mr. Hedger's claims at 4,000 or 5,000 Rupees. Mr. Hedger has recovered a judgment for more than 10,000 Rs. Joygopaul Chatterjea, however, gives no evidence of any payments to him reducing his claim ; and his statement, from its very vagueness and uncertainty, supplies no assurance of its correctness. The taxed bills show a claim for 7,500 Co.'s Rupees, and, considering for how long a time and in how many matters of litigation, Mr. Hedger had been acting as Joygopaul Chatterjea's attorney, the amount seems not unreasonable. The other claims are for money lent, and matters not professional. It is urged, however, that the demand is fraudulently swelled beyond its true amount. There is, however, no proof of that. The time for disputing the amount was in the enquiry as to damages. Joygopaul Chatterjea, in the usual manner, would have notice of that, and you must consider whether his mere imprisonment, which is

no bar to his daily attendance here now, would have prevented his appearing before the Court, to reduce an unjustly swelled demand to its real amount. *Primâ facie*, credit must be given to the judgment. But even if the demand were unduly swelled, unless Mr. Hedger's claims could be cut down below the 6,000 and odd Rupees which he was to receive under the compromise, he would be no gainer by it and would have no motive to run such dreadful risks; for it is to be observed that this forgery is not like that of a bill of exchange, Government paper, or other negotiable instrument, which passes from hand to hand, and which, if once put in circulation, may not be traced up to its authors; but it is a forgery of which the commission and its authors would be at once known to the victim of it. Taking, then, the whole of the claims together, this is really only a motiveless crime committed against the pecuniary interest of the main actors in it: and it is only a trifling acceleration of payment in point of time, so far as Mutty Loll Seal is concerned, of a sum considerably less than that which, under his mortgage suit and under the Burraul suit, he would be entitled to. As to the supposed loss by the sale of the talook for arrears of revenue, the case for the prosecution fails, for there is no proof that the estate was sold for less than it was worth, had even a mortgagee in possession been under a legal obligation to lay out money to avert such a forfeiture.

The question you will observe, gentlemen, as to the right to this money, is a purely legal one. The indictment states that Joygopaul Chatterjea was entitled to a certain share, viz., 21,000 and odd Rupees, and on that basis the inference of fraud against him is laid. The question is not what some of these parties may have, at some preceding time, thought of their rights to the money, or the estate; but what those rights, when correctly viewed, really were. In the Burraul suit, there was an order to take the bill as confessed; and the same decree would have been made as if the case had been heard before, on the admissions in the answer. They could not be legally defrauded, as between them and the prior title, of what did not belong to them, whatever they may have thought; and it is only when their claim is viewed in a false light, by losing sight of the paramount claim in the Burraul suit, that the notion of a one-sided contract can be entertained. Mr. Hedger is not represented as otherwise than a clever attorney. He seems for a while to have baffled successfully Baboo Mutty Loll Seal, and it is not probable that when an order to take the bills *pro confesso* in the Burraul

suit was actually obtained, that he would have been blind to the consequences of it to his client. There is a reference to this subject in a letter of Joygopaul Chatterjea, which seems to show that a due sense of this danger was entertained. This second head of probabilities depends, as you will have observed, on a right understanding of these complicated suits and transactions. It seems to us to fail as well as the first, and as they both are purely legal questions, we have no hesitation in expressing our clear opinion upon them.

The third head involves more weighty matter. I have read over the whole of the depositions in the other suits with great care. I was not present at those trials, and had only a very cursory acquaintance with what passed at them. I have no desire to criticise what passed there, but I think it due to Mr. Peterson to state that I do not perceive by the report that he abused the privilege of cross-examination. A wide range is necessarily allowed to a cross-examination by Counsel in testing the claim of a witness to be received as a creditable and trustworthy witness. Matters apparently quite unconnected with the cause, may have an important bearing on the character of a witness ; and it is in general the best course to depend on the assurance of Counsel that there is a remote relevancy in that, which is *primâ facie* irrelevant. Discrepancies there are, undoubtedly, and important ones, deserving to be noticed and considered. As to one witness, Mr. Michael, I think I should have told the Jury that no safe dependence could be placed on his testimony. His explanations are not satisfactory. A witness may disqualify himself by his folly or his inaccuracy, as well as by his wilful falsehood. We are often in the painful position of distrusting a witness whom it would be rash and unjust to pronounce wilfully and corruptly perjured : and I think that if Michael had been indicted for wilful and corrupt perjury, I should have said had there been no more than the discrepancies and errors which I have before referred to, that there was no sufficient evidence of wilful and corrupt perjury, and that such a conclusion would be rash and dangerous. It is to be observed further, that it does not support this case to show that perjury even was committed by a witness. To support this charge, it must be shown that the main story in which all joined was false. In Mr. Hedger's evidence there is no real discrepancy. If his whole evidence be taken together, it is plain that he always asserted the interest of Dwarkanauth Chatterjea. The evidence of Baboo Mutty Loll Seal is not so satisfactory as that of Mr. Hedger. But there is consistency in the main.

It is to be remembered that many a witness on the forensic rack of cross-examination, hesitates and shuffles as to matters personal to himself, though his main statement may be consistent. There is a general agreement between these parties in all the main circumstances of their story. There is great force and weight in the argument of Mr. Ritchie on this point in his speech, which it was an intellectual treat to listen to, and which satisfied me that he was not only a good advocate, but a much better thing, a good man. Indeed, I may say unfeignedly, that the only pleasure which I have had in this most painful inquiry, was to witness, in the advocates of this Court, a degree of zeal and talent which could not be surpassed in Westminster Hall itself. It ranks amongst its advocates, men who, in talent and worth, do not fall below those of Westminster Hall. Inestimable is the value to an accused of such high advocacy: it is an inestimable privilege next in rank to that of trial by a man's peers, and which can never become unpopular, till the advocate learns, habitually, to abuse his privilege. It was urged by Mr. Ritchie, that these discrepancies were of the character that ordinarily accompany a true tale. If such variations are no greater than those which abound in many a true story, can they be viewed alone and abstractedly of all other considerations, as stamping their story as a false one?

Hitherto, I have considered the case for the prosecution as alone having the aid of probabilities arising from discrepancy of statements. We must now view it in another light. Mr. Dickens, with a force of language which I cannot imitate, dwelt on the improbability of the story for the prosecution. You heard his arguments, and can judge of their weight. I stated to you, that if Joygopaul Chatterjea was to be viewed as a witness entitled to an average degree of credit, his testimony was still *primâ facie* outweighed; but I am sorry to say that I cannot so present him. You remember that he was examined by Mr. Ritchie, whether he had not personally denied that the bulk of the letters were his. After several attempts to escape from the question, he admitted that he and his vakeels had done so. It was urged that this was no more than that which is done daily where a party pleads in denial of his bond or bill of exchange. But in reality, this was not a pleading, but an examination. In all cases, it is wrong that the rule of procedure should force a man, who merely means to put his opponent to the proof of his case, to say that which is in terms untrue. In some cases, the whole merits of a case

rest with a defendant: and his security in such cases may depend on the inability of a plaintiff to prove a case, or on the necessity of a cross-examination by his Counsel of a witness. For this purpose, he may often put a plaintiff to the proof of that which in fact he knows to exist. The law is yet so defective in the protection which it gives to honest purchasers and incumbrancers, that it enables a long dormant title to be asserted against a purchaser for value, and he who has the sympathy of every one who knows on whose side is the balance of equity, has often his safety from ruin dependant on failure of the proof of some link of the plaintiff's case. There are cases indeed in which this sort of pleading merits and receives censure, and it sometimes receives punishment in the Insolvent Court. If this had been a pleading, the argument would have been correct; but it was in truth an examination, and the witness, admitting at last that it was so, excused himself on this ground, that there he was not on his oath, but that in this Court he was sworn. But it was an inquiry on an important point: and the denial might seriously affect the character of the man whose authority he disclaimed, and whom he impliedly charged with fraud and deception on the Court in which he was acting: and though he was not on oath, he was speaking under a solemn declaration, which, in its penal consequences, is the same, and in its nature little less solemn.

(*Mr. Peterson* here interposed, and said that such was not the case, in which he was confirmed by *Mr. Ritchie.*) The *Chief Justice* expressed his extreme regret for his error. He had concluded, the evidence was taken on solemn declaration, and he desired the Jury to disregard those latter observations, and expressed his obligation to Mr. Peterson for the correction.)

I was wrong, gentlemen, (he continued,) in saying that Joygopaul Chatterjea, spoke under a solemn declaration to speak the truth: and most sorry am I to have done him that injustice: the vast amount of evidence must be my excuse. But still he spoke untruly, and cannot therefore be presented as one having the ordinary title to credit of a witness whose veracity has been in *no* instance disproved. His discrepancies are as important as those of the witness for the prosecution in the former trials, which have been so much dwelt on. I am far from saying that he ought to be viewed as a perjured man because his evidence as to the promissory note in the civil suit differs so materially from that as to the same note on the present occasion. You heard

his explanation, and will judge whether, if his explanation be correct, it was satisfactory. He had some knowledge of English, and is less likely to fall into so grave an error, as that of signing a deposition which so materially misrepresented his meaning. Where mere discrepancies are thus pressed against defendants, the argument, if sound, would rebound against the prosecutor.

But there is a still greater difficulty in the way of the case for the prosecution. If Joygopaul Chatterjea's evidence be true, then there is no escaping from the conclusion that Ramapersaud Roy is both a forger and repeatedly perjured. *Habemus confitentem reum;* for even as to the last mooktearnamah, he admits that it was prepared by his directions in his office, and by him handed over to be used and acted on. He would be therefore taking an express and direct part in a stage of the forgery, and both in reason and on authority would be held to be an actor in it. Had Joygopaul Chatterjea's story been that he had at first agreed, though reluctantly, to the compromise, that he had afterwards repented and finally refused to execute the mooktearnamah, then, as Ramapersaud Roy says that he did not see the last mooktearnamah actually executed, these two statements might have been reconcileable. But that is not the story which he tells. He denies the whole story told by Ramapersaud Roy: denies that there was any compromise: in short, is at issue with him in all the points of the story. The Grand Jury ignored the bill against Ramapersaud Roy. They also may have erred in this, as others are said to have erred: but in reality, what motive had he to commit such crimes, and what is there in his past life, in his character or position, to raise a reasonable foundation for such a charge? All his interest was the other way. It was well asked what bribe would suffice to purchase him, and if bribed, what profit would remain to the conspirators? *Primâ facie,* he is a witness who has as fair a claim to be believed on his oath, as myself, my learned colleague, or any gentleman that I see around me. No single question was put to him even tending to show that his antecedent career or actions had been the reverse of creditable. He has filled, and still fills, an important office—that of Government Pleader. But it is said that his evidence is unsatisfactory, because discrepancies exist between his testimony now and that given on former occasions. You have heard the answers given to that.—Mr. Ritchie quoted the opinion of a great writer, Archdeacon Paley, on this point. The passage is also quoted in

Mr. Starkie's book on evidence. That writer was dealing with a sacred subject, but his remarks on the weight of evidence apply equally to subjects not sacred. He quotes the discrepancies of statements in contemporary writers as to the death of the Marquis of Argyle: in the hour of death and the mode of execution: yet he says who would thence conclude that the Marquis was not publicly executed? I remember an instance myself. At one Lancaster assizes, one of the presiding judges, on the last day of the assizes, had a fit in Court, was carried out of Court, and was unable to resume business. At the first day of the ensuing assizes, some six months afterwards, the subject was started at the Bar Mess, and though there were several eye-witnesses of the scene present, yet even amongst them there was not an entire agreement, for though they all agreed on the fact of the fit and its consequences, yet some said that it was in the Crown Court, and others were as positive that it was in the Civil Court, where the illness attacked him. Now, to a person of the profession of Ramapersaud Roy, this transaction would be one of ordinary business not likely in itself to leave more than the ordinary impression, after circumstances have given it an importance which it would not have in itself in his eyes; and therefore mere discrepancies in minor matters of detail, might reasonably be excused in such a statement, instead of being converted into charges of wilful and deliberate perjury.

There are still one or two matters for remark on the testimony of Joygopaul Chatterjea. He tells you that he made no compromise with Mutty Loll Seal; that Mr. Hedger had proposed it to him, but that he expressly refused to sanction it; that he had effected a compromise of the Burraul suit, and had instructed Mr. Hedger to prepare the requisite consent paper, who assented. But this compromise he says he made with a servant of the Burraul family. But the Burraul family had no interest in the suit, and could not have compromised it. Mr. Peard, the attorney, tells you that he would not have acted on any consent of theirs. Indeed he would have acted treacherously and dishonourably if he had. How, then, could Mr. Hedger give his assent and promise to effect that which he must have known could not be effected? The suit could not be dismissed without consent motion papers on the instruction of each attorney, and Mr. Hedger knew that. This, therefore, cannot be true. But another consideration arises. If Joygopaul Chatterjea's story is true, Mr. Hedger

was then at that very time engaged in this conspiracy. He says that he had refused his consent. Yet Mr. Hedger tells him of the consent papers—that is, tells him needlessly of that which might peril the success of the whole scheme by rousing his suspicions and exciting his resentment. It is in a manner building up a wall against oneself. Secrecy and not disclosure would have been natural. Is the prosecutor's testimony on this point then, probable?—Again, the dismissal of the bills is unaccountable. The dismissal of the injunctions was necessary: the other was unnecessary; and we should naturally expect the conspirators to wait and see the success of their scheme, before they acted so detrimentally to their own interests. These are all grave questions, the solution of which is absolutely necessary, before it can be said that the probabilities incline on the side of the prosecution. But there is other evidence behind. The last letter of the series before the two which are alleged to have been forged, speaks in plain terms of a compromise as then actually in progress. There is no limitation here to any particular suit. Such limitation would be merely arbitrary. Yet the prosecutor has sworn that he never sanctioned any compromise with Baboo Mutty Loll Seal—nay, that he had expressly refused his assent to it. He asserts that the witness, Surroopchunder Hazra, was not his mooktear at that time; that he had been, but had ceased to be so. He dated this cessation from the date of the letter to the Collector and the corresponding petition. But the evidence shows that Joygopaul Chatterjea had vakeels who had authority in suits, but not in money transactions: the money we hear was in the Collector's hands, and there was an effectual stop put on it. The withdrawal of the mooktearnamah is not therefore explained by the cause assigned. It is expressly denied by Surroopchunder Hazra, who swears that it remained filed in the Sudder Ameen's Court, which, if false, might easily be detected. The whole scope of this correspondence shows that Surroopchunder Hazra was acting as the paid mooktear of Joygopaul Chatterjea. (The Chief Justice read extracts from some of the letters as supporting this.) There is an allusion in Letter 9 to the Burraul suit, and the effect which its renewal would have on his right to obtain the money,* which tends to support the case of the defendants,

* The following is the passage referred to:—"Brijonath Dutt, the son-in-law of Mohunchunder Burraul, and others, have again filed a bill in equity, and issued a sequestration, for which cause, if that suit be unsettled, I shall not obtain the surplus of the consideration money of Lot Porunbatty."

In speaking of it he uses no expression to the effect that that cause was a groundless one. There is nothing to show that it was not deemed formidable. The allusion to the effect which it might have on his right to the money, looks rather the other way.

I now come, gentlemen, to the last head of the four, viz., the corroboration afforded to the prosecutor's story by the forgery of the letters which are the last of the series.

These two letters form the last two of a connected series of letters from Joygopaul Chatterjea to the witness Surroopchunder Hazra. On this point also you will regard the probabilities of the case in conjunction with the evidence. The evidence as to hand-writing is about balanced. One witness for the prosecution thought one of them in the hand-writing of Joygopaul Chatterjea; and both in numbers of witnesses and the weight of testimony, the balance scarcely inclines (if it inclines) on the side of the prosecution as to the hand-writing of these letters. But other arguments were adduced to prove these letters forged. The mode of signature appears to be different from that of the genuine letters. Mr. Bennett, although he spoke with no degree of certainty, inclined to the opinion that the letter had been through some post office. One can see no reason for forging a post mark, since it would have been as easy to send a forged, as a genuine letter, by the post. Against the argument of the spuriousness of these two letters from their not being signed as the others are, must be set the great probability of their being genuine, which is afforded by the internal evidence which their contents supply, as also by the conduct of the alleged forger of them, Surroopchunder Hazra. The letter which precedes them, promises a further communication, should the settlement of which it speaks as in progress, take effect. These forged letters, if they are forged, must have been forged by one well acquainted with the prosecutor's style and business. That is clear from their contents. If a forgery, it must have been a very artful one. The forger has succeeded in giving a perfectly natural character to the letters. The hypothesis ascribes their forgery to Surroopchunder Hazra, and the hypothesis of the forgery required that the forger should be some one acquainted with the prior letters. But with the letters before him, is it conceivable that *he* should overlook the obvious and important point of similarity of mode of signing? Again, his conduct is not reconcileable with this hypothesis; for as one of the genuine letters at least—viz., that which

immediately precedes the first of the alleged forgeries—speaks of a compromise as going on, that letter would have been of great importance on the side of the prosecution on the trials of Joygopaul Chatterjea for perjury. On what rational conjecture can the keeping back of this letter be supported?—for if Surroopchunder Hazra forged the letters, it must have been to support the case of the now defendants, by making an allusion to the mooktearnamah as a genuine instrument; and as that was coeval with the production of the mooktearnamah, it is impossible to escape from the conclusion that he was a co-conspirator with them. But then is it probable that he would have kept from them that which so materially served their common object? Another argument of equal weight arises on the needless multiplication of forgeries which the hypothesis for the prosecution embodies. It may be deemed almost too light and comic an allusion whilst dealing with so grave a subject, but I am tempted to observe that a celebrated wit (Fielding) mentions certain parental lessons, which were delivered by Mr. Wilde to his son Jonathan, in which is contained the following precept:—"Never do more mischief on any occasion than the occasion requires, for mischief is much too precious a thing to be wasted." But the forger of these letters, if they are forged, seems to have overlooked this precept, and to have been quite a prodigal in crime. You will observe, that the only motive for a forgery here would be to make allusion to the mooktearnamah as a genuine instrument—to set it up as a means to effectuate the fraud. But the first letter contained an ample reference to it: the forgery of the second, and the forgery of the postscript or endorsement, in the name of Dwarkanauth Chatterjea, would not only not advance the object, but would expose it to greater risks of defeat, by multiplying the risks of detection. Taking these conflicting arguments into your consideration, you will say whether the prosecutor has established them to be forgeries. But, gentlemen, what ground is there for imputing this forgery and perjury to the witness Surroopchunder Hazra? Not a question was put to him as to his past life or conduct to represent him as a person generally unworthy of credit. His calling was a respectable one, and he does not seem to have evinced an alacrity to serve the cause of the defendants, when one of them was the prosecutor of Joygopaul Chatterjea. It does not appear that any criminal charge has been preferred against the witness by Joygopaul Chatterjea, and there is nothing in proof to justify such an imputation.

To these observations must be added the remark, that no prosecution was instituted by Joygopaul Chatterjea until upon the failure of the indictments against himself. The staleness of a prosecution is always some ground, in a Court of Justice, for doubting if it be really well founded: If Joygopaul Chatterjea had been some poor wretch, denuded of means and health, the argument from the lateness of this prosecution would have been a very feeble one. But on the evidence, he cannot be so viewed. We find him preferring one indictment for perjury, which terminated in an acquittal, and threatening Mutty Loll Seal with another. We know nothing of the grounds on which the first failed, and as I have before told you, we can form no inference unfavourable to the prosecutor, from the mere acquittal of a defendant. It appears also, that he was engaged in a great amount of litigation as well in this as in the Mofussil Courts. If the imputation now cast on Surroopchunder Hazra be true, he must have been an accomplice: yet, no criminal charge appears to have been preferred against him.

There is one topic yet on which I must address you. Our law does not allow, in general, any evidence to be given of prior crimes, or addiction to crime, or of bad character. These men are charged with specific offences, and are not called upon to answer to, or to explain matters of crimination unconnected with the present charge. Had they been the worst members of this society, nothing could have been given in proof against them which had no connection with the particular offence to which they are to answer. So jealous is our law of any invasion of this principle, that lately, when a heavier punishment was awarded against one, who, having been convicted of a prior felony, was charged with a second, the indictment reciting also his conviction, the Legislature interposed and provided that no mention should be made to the Jury of that part of the indictment until they had tried and returned a verdict upon the matter of the offence for which he was then under trial. It is the duty of a Counsel for the prosecution to be auxiliary to the Court in the trial. This has often been stated by the Judges in England, and has more than once been pressed on the Bar here by myself. I honor the advocate who stands up warmly and fearlessly for his client, and have no doubt that Mr. Peterson believes his client to be the injured man he has described him. He has drawn a distinction between a private prosecution and one conducted by the officers of the Crown; but we can admit no such distinction. Whatever

the feelings of the prosecutor, his Counsel must not reflect them, but be the temperate minister of public justice. A Counsel should open nothing which he is not allowed by Law, to prove, and is not instructed that he can prove, where it makes against the accused.

(*Mr. Peterson* here interposed and stated that he considered that he had not done so.)

I heard, with pain, allusions to the baboo millionaire—the ruined zemindar,—and matter pressed against Mr. Hedger, which could have no earthly connexion with this charge, as it long preceded the reconciliation between him and Mutty Loll Seal, and took place at a time when he was in fierce opposition to Mutty Loll Seal. My remarks are not intended to apply to Mr. Peterson alone, but to be an admonitory caution to all the Bar, to be careful to imitate in conducting prosecutions, the temperate tone of the English Bar.

I now conclude my observations to you. The Law, you will take from the Court. The observations which I have made to you on the facts, are intended merely to guide, not to control your judgment. With you, such an attempt would be ridiculous. I have been accustomed to tell Juries, that they are exclusively the judges of the fact, and that they must give to my comments on evidence the weight only that is due to them as arguments, disregarding them if they have not the concurrence of their free, unbiassed judgments. This remark I repeat to you. With you the responsibility rests. If you doubt about the case, the defendants are entitled to the benefit of your reasonable doubts.

The Jury retired, and after a few minutes, returned as to all the defendants, a verdict of

NOT GUILTY.

SANDERS, CONES AND CO., TYPS., NO. 14, LOLL BAZAR.